
HOUSE BILL 2307

State of Washington

57th Legislature

2002 Regular Session

By Representatives Doumit, Sump, H. Sommers, Sehlin, Kessler and Eickmeyer

Read first time 01/14/2002. Referred to Committee on Natural Resources.

1 AN ACT Relating to timber substitution; adding a new chapter to
2 Title 79 RCW; creating a new section; prescribing penalties; 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.

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

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

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

10 (1) "Agency" means any state or unit of local government that owns
11 or manages land from which timber is harvested in the state of
12 Washington.

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

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

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

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

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

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

36 (8) "Public lands" means lands in the state of Washington that are
37 held or owned by the state of Washington or unit of local government
38 within the state.

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

4 (10) "Substitution" means the purchase of export restricted timber
5 or possession of an active sale contract for export restricted timber:
6 (a) By a person who owns and operates a processing facility; (b) where
7 the person owning the processing facility also exports or sells for
8 export from the United States unprocessed timber originating from
9 private lands in Washington, Oregon, or Idaho; and (c) where the lands
10 are owned by the person, or the person has exclusive rights to harvest
11 timber from the lands, where the rights may be exercised at any time
12 during a period of more than seven years.

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

16 (12) "Unprocessed timber" means trees or portions of trees or other
17 roundwood not processed to standards and specifications suitable for
18 end product use.

19 NEW SECTION. **Sec. 3.** (1) Each agency managing public lands
20 subject to this chapter must designate timber sales to be sold as
21 export restricted and as exportable. An order issued by the secretary
22 of commerce of the United States remains in effect until revised by
23 order of the secretary. Sales designated as export restricted must be
24 distributed proportionately throughout the geographical area of land
25 owned or managed by the agency. Timber originating from sales
26 designated as export restricted must be representative of the species
27 and grade distribution of the agency's sale program.

28 (2) Designation of timber sales as export restricted and as
29 exportable must be on a sale-by-sale basis and apply to the entire sale
30 being considered. However, a sale must be subdivided into portions
31 that are export restricted and exportable if there are insufficient
32 sales in the annual sales program to ensure that designation on a
33 sale-by-sale basis meets the applicable requirements of the federal
34 forest resources conservation and shortage relief act.

35 NEW SECTION. **Sec. 4.** (1) No person may export from the United
36 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 and western red cedar are not considered
21 as part of the volume within a sale under this exemption. The
22 transferor must notify the department in writing of such a transaction
23 prior to physically transferring the timber to the transferee. Rights
24 to purchase export restricted timber under this subsection may be used
25 on a sale-by-sale basis and may not be accumulated or transferred to
26 other sales. The advertised volume or volume specified in the sale
27 agreement must serve as the basis for determining the sale volume to
28 which the percentage applies;

29 (3) The purchase by any person of export restricted timber
30 originating from public lands east of the crest of the Cascade mountain
31 range if such a person does not export or sell for export timber from
32 private lands in that geographic area. However, a person located east
33 of the crest of the Cascade mountain range who was ineligible to
34 purchase export restricted timber east of the Columbia river under the
35 regulations in effect upon January 1, 2002, may not bid on export
36 restricted timber sales of timber located in the Loomis forest until
37 July 1, 2004;

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

4 (5) The sale of timber that has suffered damage from fire, insects,
5 or disease;

6 (6) The sale of timber in which at least ninety percent of the
7 volume of the sale is not of export grade. This exemption includes
8 thinnings and small patch clear-cuts offered for sale; or

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

15 NEW SECTION. **Sec. 6.** (1) An agency must accept bids from persons
16 not otherwise eligible to bid on sales of export restricted timber for
17 the purpose of opening these bids on a contingent basis. Bids received
18 from otherwise ineligible persons may be opened only if the agency
19 receives less than three bids on the proposed timber sale from eligible
20 bidders. Once opened, contingent bids are treated in the same manner
21 as if the bid had been received from a person who is eligible to bid on
22 export restricted timber. If the agency does receive bids from at
23 least three persons who are eligible to bid on export restricted timber
24 sales, all contingent bids received by the agency must be destroyed
25 without those bids being opened.

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

1 NEW SECTION. **Sec. 7.** (1) The department must develop and issue
2 uniform forms to be used as purchaser certifications and transferee
3 certifications for purposes of submission under section 8 of this act.
4 Each form must include a notification, conspicuously placed, that the
5 making of a false statement on the certification is punishable as a
6 gross misdemeanor under RCW 9A.72.040. The forms shall include all
7 necessary provisions to account for exemptions allowed under section 5
8 of this act.

9 (2) Copies of all certifications received by the department must be
10 available for public inspection at reasonable hours and locations.

11 (3) The department may audit certifications submitted by any person
12 in order to ensure that the person is able to account for the
13 disposition of all export restricted timber that the person has
14 purchased from a public agency or received by means of transfer from
15 another person.

16 (4) The department must develop and implement a program to audit
17 certifications submitted in order to ensure that persons who acquire
18 export restricted timber are able to account for the disposition of all
19 export restricted timber that they have purchased from a public agency
20 or received by means of transfer from another person.

21 NEW SECTION. **Sec. 8.** (1) Prior to issuing a contract for the sale
22 of export restricted timber, an agency that has offered the timber for
23 sale must require that the purchaser submit two signed copies of a
24 purchaser certification form developed by the department, which
25 affirms, under penalty of law, the truth of each of the following:

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

27 (i) Exported by the purchaser or used in substitution by the
28 purchaser; or

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

31 (b) That hammer brands and red paint applied to the timber as
32 required by this chapter remain on the timber until it is domestically
33 processed;

34 (c) That prior to selling, trading, exchanging, or otherwise
35 conveying any timber that is export restricted timber to any other
36 person, the purchaser (transferor) must require the transferee to
37 provide to the purchaser two signed copies of a completed transferee
38 certification developed by the department; and that the purchaser must

1 provide the department with one copy not later than five days after
2 receipt from the transferee;

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

7 (2) An agency must submit a copy of the purchaser certification to
8 the department no later than five days after the receipt of a purchaser
9 certification furnished to the agency under this section. The agency
10 must make copies of the reports available to the public at reasonable
11 times and locations.

12 (3) A person possessing export restricted timber must, prior to
13 selling, trading, exchanging, or otherwise conveying the timber to
14 another person, require the transferee to provide to the transferor two
15 signed copies of a completed transferee certification developed by the
16 department. The transferee certification must include an affirmation,
17 under penalty of law, as to the truth of each of the items required to
18 be affirmed in a purchaser certification, as well as the quantity of
19 export restricted timber that is being transferred. The transferor
20 must provide to the department one signed copy of the transferee
21 certification not later than five days after the receipt from the
22 transferee.

23 NEW SECTION. **Sec. 9.** (1) The department must establish and
24 maintain a list of persons who, due to violations of this chapter, are
25 ineligible to purchase export restricted timber. The department must
26 add a person's name to the list if it finds, or has been notified by an
27 agency, that the person has violated the provisions relating to the
28 prohibition against exports, the prohibition against substitution, or
29 the limitation on indirect transactions. A person must be removed from
30 the list after the period of time has elapsed as is required under the
31 debarment order issued under section 12 of this act. A person whose
32 name is placed on the list for a second debarment may not have their
33 name removed from the list.

34 (2) The department must provide a copy of the list of ineligible
35 purchasers to each agency that sells export restricted timber, and each
36 person who requests to receive copies of the list. The department must
37 provide revised copies of the list to all of these agencies and persons
38 whenever a person is added to or removed from the list.

1 NEW SECTION. **Sec. 10.** (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 9 of this act.

13 (3) By March 31st of each year, each agency selling timber from
14 public lands must report to the department on the results of its sales
15 program for the preceding calendar year. The report must include
16 information on the volume, species, grade, and geographical
17 distribution of sales sold as export restricted and not export
18 restricted.

19 NEW SECTION. **Sec. 11.** (1) All log ends ten inches or greater in
20 diameter from sales of unprocessed timber by a public agency covered by
21 this chapter must, prior to removal from the sale area, be hammer
22 branded with a brand registered under chapter 76.36 RCW.

23 (2) In addition to all applicable branding requirements, both ends
24 of all logs from those sales designated as export restricted by an
25 agency must, prior to removal from the sale area, be painted with
26 durable red paint.

27 (3) If timber that has been properly marked and branded is
28 subdivided into smaller pieces for any purpose other than immediate
29 processing, each piece must be marked in the same manner as the
30 original timber.

31 NEW SECTION. **Sec. 12.** (1) If the department finds that a person
32 has violated any provisions of this chapter, or any rule implementing
33 this chapter, the department must provide written notice of the
34 violation to the person and provide the person an opportunity to be
35 heard concerning the department's findings. The person must have an
36 opportunity to contest the department's findings or explain any
37 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) A fine not to exceed fifty thousand dollars for each violation
5 that the person should have known constituted a violation;

6 (b) A fine not to exceed five hundred thousand dollars for each
7 violation the person committed willfully.

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

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

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

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

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

35 NEW SECTION. **Sec. 13.** (1) The department is responsible for the
36 proper administration of this chapter. The department has the
37 authority to adopt, in accordance with chapter 34.05 RCW, all rules to
38 implement this chapter. The department also has the authority to

1 administer and otherwise modify chapter 240-15 WAC, as recodified
2 pursuant to section 14(2) of this act, to ensure that it is consistent
3 with the provisions of this chapter. The department may undertake
4 studies, analysis, or research necessary to carry out the provisions of
5 this chapter. The department may delegate powers, duties, and
6 functions of the department to its employees as it deems necessary.
7 The department may also enter into all necessary contracts and accept
8 any gifts, grants, or funds for the purposes of this chapter.

9 (2) Whenever the department becomes aware of a violation, or
10 possible violation, of the prohibitions relating to export,
11 substitution, or certain indirect transactions, it must notify the
12 managing agency so that the agency may promptly take appropriate
13 action, as provided in this chapter.

14 (3) The department must develop and implement a program for the
15 monitoring of export restricted timber in transit and at ports and
16 other facilities for the purpose of ensuring that export restricted
17 timber is not exported from the United States or used in substitution.
18 The department may enter into contracts or agreements with other
19 appropriate state or federal authorities for the purpose of meeting the
20 monitoring requirements of this section.

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

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

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

19 NEW SECTION. **Sec. 15.** (1) The legislature finds that there is
20 some disagreement regarding the impacts likely to result from
21 relaxation of the timber substitution rules. The legislature therefore
22 finds it is in the public interest and for the benefit of the general
23 welfare of the citizens of this state to establish a temporary pilot
24 program within strict parameters to examine how a border county with an
25 exceptionally high unemployment rate is impacted by a temporary
26 relaxation of the substitution rules. The legislature recognizes that
27 Klickitat county has been one of the counties with the highest levels
28 of unemployment since the mid-1980's. Klickitat county currently has
29 an unemployment rate of over ten percent and has only one timber mill
30 remaining open. The legislature finds that because this mill exports
31 less than ten percent of its privately owned timber, and that this
32 timber is only exported because it is too large for processing in its
33 own manufacturing facilities, that a relaxation of the timber
34 substitution rules in Klickitat county is likely to result in an
35 expanded job base and more revenue for the county.

36 (2) A temporary pilot program is authorized for Klickitat county
37 for a three-year period beginning on July 1, 2002, and expiring on June
38 30, 2005, that allows the existing timber mill in Klickitat county to

1 bid on export restricted timber sales subject to the limitations of
2 this section. Bids submitted by the existing timber mill under this
3 section must be treated as a bid from an eligible bidder and not as a
4 contingent bid under section 6 of this act. The purpose of this pilot
5 program is to examine: (a) How often the existing timber mill is
6 successfully awarded export restricted timber sales through the bidding
7 process; (b) the number of bids received by public agencies on export
8 restricted timber sales in which the existing timber mill submitted a
9 bid under this section, and whether it appears that more revenue is
10 being produced for the trusts on those sales where the existing timber
11 mill submits a bid; (c) the creation of any jobs at the existing timber
12 mill related to relaxation of the timber substitution rules, as well as
13 the wage levels of those jobs created; (d) any increased revenue to
14 Klickitat county as a result of export restricted timber sales being
15 awarded to the existing timber mill; and (e) other positive or negative
16 economic impacts that the county can identify as a result of a
17 relaxation of the timber substitution rules in Klickitat county. The
18 existing timber mill must agree: That during its participation in the
19 pilot program it will export no more than ten percent of its privately
20 owned timber, and that any timber it exports cannot be suitable for
21 processing at its own mill. A joint agreement must be signed by the
22 department of revenue, Klickitat county, and the existing timber mill
23 that outlines the monitoring and reporting responsibilities of each
24 party. The department of revenue must issue a report on its findings
25 regarding the pilot program by January 1, 2006.

26 NEW SECTION. **Sec. 16.** This chapter does not apply to the extent
27 that an order issued by the secretary of commerce of the United States
28 under the federal forest resources conservation and shortage relief act
29 is suspended, removed, or modified by the president of the United
30 States. Timber that has been determined to be surplus to the needs of
31 timber manufacturing facilities in the United States by the secretary
32 of agriculture or the secretary of the interior of the United States is
33 not subject to regulation under this chapter.

34 NEW SECTION. **Sec. 17.** The governor shall submit this chapter and
35 any implementing rules adopted by the department to the secretary of
36 commerce for approval under 16 U.S.C. Sec. 620c(d)(2). The governor
37 must also provide any information reasonably requested by the secretary

1 of commerce to determine whether the state's program complies with all
2 requirements of federal law. If the secretary of commerce disapproves
3 the state's program as submitted, the department may adopt rules
4 consistent with the intent of this chapter in order to correct those
5 deficiencies in the program identified by the secretary of commerce.

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

10 NEW SECTION. **Sec. 19.** This act takes effect upon the approval of
11 this act and related regulations by the secretary of commerce under 16
12 U.S.C. Sec. 620c(d)(2).

13 NEW SECTION. **Sec. 20.** Sections 1 through 14 and 16 through 19 of
14 this act constitute a new chapter in Title 79 RCW.

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