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**SUBSTITUTE SENATE BILL 5074**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Oke, Doumit, T. Sheldon, Fraser and Rasmussen; by request of Commissioner of Public Lands)

READ FIRST TIME 01/30/03.

1       AN ACT Relating to the authority of the department of natural  
2 resources to contract for the harvest of timber from state trust lands;  
3 amending RCW 76.12.030, 76.12.120, 79.64.040, 43.85.130, and 84.33.078;  
4 reenacting and amending RCW 43.79A.040 and 84.33.035; adding a new  
5 chapter to Title 79 RCW; creating new sections; and making  
6 appropriations.

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

8       NEW SECTION. **Sec. 1.** The legislature finds that it is in the best  
9 interest of the trust beneficiaries to capture additional revenues  
10 while providing for additional environmental protection on timber  
11 sales. Further, the legislature finds that contract harvesting is one  
12 method to achieve these desired outcomes. Therefore, the legislature  
13 directs the department of natural resources to establish and implement  
14 contract harvesting where there exists the ability to increase revenues  
15 for the beneficiaries of the trusts while obtaining increases in  
16 environmental protection.

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

1 (1) "Commissioner" means the commissioner of public lands.

2 (2) "Contract harvesting" means a timber operation occurring on  
3 state forest lands, in which the department contracts with a firm or  
4 individual to perform all the necessary harvesting work to process  
5 trees into logs sorted by department specifications. The department  
6 then sells the individual log sorts.

7 (3) "Department" means the department of natural resources.

8 (4) "Harvesting costs" are those expenses related to the production  
9 of log sorts from a stand of timber. These expenses typically involve  
10 road building, labor for felling, bucking, and yarding, as well as the  
11 transporting of sorted logs to the forest product purchasers.

12 (5) "Net proceeds" means gross proceeds from a contract harvesting  
13 sale less harvesting costs.

14 NEW SECTION. **Sec. 3.** (1) The department may establish a contract  
15 harvesting program by directly contracting for the removal of timber  
16 and other valuable materials from state lands.

17 (2) The contract requirements must be compatible with the office of  
18 financial management's guide to public service contracts.

19 (3) The department may not use contract harvesting for more than  
20 ten percent of the total annual volume of timber offered for sale.

21 NEW SECTION. **Sec. 4.** The contract harvesting revolving account is  
22 created in the custody of the state treasurer. All receipts from the  
23 gross proceeds of the sale of logs from a contract harvesting must be  
24 deposited into the account. Expenditures from the account may be used  
25 only for the payment of harvesting costs incurred on contract  
26 harvesting sales. Only the commissioner or the commissioner's designee  
27 may authorize expenditures from the account. The board of natural  
28 resources has oversight of the account, and the commissioner must  
29 periodically report to the board of natural resources as to the status  
30 of the account, its disbursement, and receipts. The account is subject  
31 to allotment procedures under chapter 43.88 RCW, but an appropriation  
32 is not required for expenditures.

33 When the logs from a contract harvesting sale are sold, the gross  
34 proceeds must be deposited into the contract harvesting revolving  
35 account. Moneys equal to the harvesting costs must be retained in the  
36 account and be deducted from the gross proceeds to determine the net

1 proceeds. The net proceeds from the sale of the logs must be  
2 distributed in accordance with RCW 43.85.130(1)(b). The final receipt  
3 of gross proceeds on a contract harvesting sale must be retained in the  
4 contract harvesting revolving account until all required costs for that  
5 sale have been paid. The contract harvesting revolving account is an  
6 interest-bearing account and the interest must be credited to the  
7 account. The account balance may not exceed one million dollars at the  
8 end of each fiscal year. Moneys in excess of one million dollars must  
9 be disbursed according to RCW 76.12.030, 76.12.120, and 79.64.040. If  
10 the department permanently discontinues the use of contract harvesting  
11 sales, any sums remaining in the contract harvesting revolving account  
12 must be returned to the resource management cost account and the forest  
13 development account in proportion to each account's contribution to the  
14 initial balance of the contract harvesting revolving account.

15 NEW SECTION. **Sec. 5.** The board of natural resources must  
16 determine whether any special appraisal practices are necessary for  
17 logs sold by the contract harvesting processes, and if so, must adopt  
18 the special appraisal practices or procedures. In its consideration of  
19 special appraisal practices, the board of natural resources must  
20 consider and adopt procedures to rapidly market and sell any log sorts  
21 that failed to receive the required minimum bid at the original  
22 auction, which may include allowing the department to set a new  
23 appraised value for the unsold sort.

24 The board of natural resources must establish and adopt policy and  
25 procedures by which the department evaluates and selects certified  
26 contract harvesters. The procedures must include a method whereby a  
27 certified contract harvester may appeal a decision by the department or  
28 board of natural resources to not include the certified contract  
29 harvester on the list of approved contract harvesters.

30 **Sec. 6.** RCW 76.12.030 and 1997 c 370 s 1 are each amended to read  
31 as follows:

32 If any land acquired by a county through foreclosure of tax liens,  
33 or otherwise, comes within the classification of land described in RCW  
34 76.12.020 and can be used as state forest land and if the department  
35 deems such land necessary for the purposes of this chapter, the county

1 shall, upon demand by the department, deed such land to the department  
2 and the land shall become a part of the state forest lands.

3 Such land shall be held in trust and administered and protected by  
4 the department as other state forest lands. Any moneys derived from  
5 the lease of such land or from the sale of forest products, oils,  
6 gases, coal, minerals, or fossils therefrom, shall be distributed as  
7 follows:

8 (1) The expense incurred by the state for administration,  
9 reforestation, and protection, not to exceed twenty-five percent, which  
10 rate of percentage shall be determined by the board of natural  
11 resources, shall be returned to the forest development account in the  
12 state general fund.

13 (2) Any balance remaining shall be paid to the county in which the  
14 land is located to be paid, distributed, and prorated, except as  
15 hereinafter provided, to the various funds in the same manner as  
16 general taxes are paid and distributed during the year of payment:  
17 PROVIDED, That any such balance remaining paid to a county with a  
18 population of less than sixteen thousand shall first be applied to the  
19 reduction of any indebtedness existing in the current expense fund of  
20 such county during the year of payment.

21 In the event that the department sells logs using the contract  
22 harvesting process described in chapter 79.-- RCW (sections 2 through  
23 5 of this act), the moneys derived subject to this section are the net  
24 proceeds from the contract harvesting sale.

25 **Sec. 7.** RCW 76.12.120 and 2000 c 148 s 2 are each amended to read  
26 as follows:

27 Except as provided in RCW 76.12.125, all land, acquired or  
28 designated by the department as state forest land, shall be forever  
29 reserved from sale, but the timber and other products thereon may be  
30 sold or the land may be leased in the same manner and for the same  
31 purposes as is authorized for state granted land if the department  
32 finds such sale or lease to be in the best interests of the state and  
33 approves the terms and conditions thereof.

34 Except as provided in RCW 79.12.035, all money derived from the  
35 sale of timber or other products, or from lease, or from any other  
36 source from the land, except where the Constitution of this state or

1 RCW 76.12.030 requires other disposition, shall be disposed of as  
2 follows:

3 (1) Fifty percent shall be placed in the forest development  
4 account.

5 (2) Fifty percent shall be prorated and distributed to the state  
6 general fund, to be dedicated for the benefit of the public schools,  
7 and the county in which the land is located according to the relative  
8 proportions of tax levies of all taxing districts in the county. The  
9 portion to be distributed to the state general fund shall be based on  
10 the regular school levy rate under RCW 84.52.065 as now or hereafter  
11 amended and the levy rate for any maintenance and operation special  
12 school levies. With regard to the portion to be distributed to the  
13 counties, the department shall certify to the state treasurer the  
14 amounts to be distributed within seven working days of receipt of the  
15 money. The state treasurer shall distribute funds to the counties four  
16 times per month, with no more than ten days between each payment date.  
17 The money distributed to the county shall be paid, distributed, and  
18 prorated to the various other funds in the same manner as general taxes  
19 are paid and distributed during the year of payment.

20 In the event that the department sells logs using the contract  
21 harvesting process described in chapter 79.-- RCW (sections 2 through  
22 5 of this act), the moneys received subject to this section are the net  
23 proceeds from the contract harvesting sale.

24 **Sec. 8.** RCW 79.64.040 and 2001 c 250 s 16 are each amended to read  
25 as follows:

26 The board shall determine the amount deemed necessary in order to  
27 achieve the purposes of this chapter and shall provide by rule for the  
28 deduction of this amount from the moneys received from all leases,  
29 sales, contracts, licenses, permits, easements, and rights of way  
30 issued by the department and affecting public lands, provided that no  
31 deduction shall be made from the proceeds from agricultural college  
32 lands. Moneys received as deposits from successful bidders, advance  
33 payments, and security under RCW 79.01.132 and 79.01.204 prior to  
34 December 1, 1981, which have not been subjected to deduction under this  
35 section are not subject to deduction under this section. The  
36 deductions authorized under this section shall in no event exceed  
37 twenty-five percent of the moneys received by the department in

1 connection with any one transaction pertaining to public lands other  
2 than second class tide and shore lands and the beds of navigable  
3 waters, and fifty percent of the moneys received by the department  
4 pertaining to second class tide and shore lands and the beds of  
5 navigable waters.

6 In the event that the department sells logs using the contract  
7 harvesting process described in chapter 79.-- RCW (sections 2 through  
8 5 of this act), the moneys received subject to this section are the net  
9 proceeds from the contract harvesting sale.

10 **Sec. 9.** RCW 43.85.130 and 1981 2nd ex.s. c 4 s 1 are each amended  
11 to read as follows:

12 (1) The department shall deposit daily all moneys and fees  
13 collected or received by the commissioner of public lands and the  
14 department of natural resources in the discharge of official duties as  
15 follows:

16 (a) The department shall pay moneys received as advance payments,  
17 deposits, and security from successful bidders under RCW 79.01.132 and  
18 79.01.204 to the state treasurer for deposit under subsection (1)(b) of  
19 this section. Moneys received from unsuccessful bidders shall be  
20 returned as provided in RCW 79.01.204;

21 (b) The department shall pay all moneys received on behalf of a  
22 trust fund or account to the state treasurer for deposit in the trust  
23 fund or account after making the deduction authorized under RCW  
24 76.12.030, 76.12.120, (~~and~~) 79.64.040, and section 4 of this act;

25 (c) The natural resources deposit fund is hereby created. The  
26 state treasurer is the custodian of the fund. All moneys or sums which  
27 remain in the custody of the commissioner of public lands awaiting  
28 disposition or where the final disposition is not known shall be  
29 deposited into the natural resources deposit fund. Disbursement from  
30 the fund shall be on the authorization of the commissioner or the  
31 commissioner's designee, without necessity of appropriation;

32 (d) If it is required by law that the department repay moneys  
33 disbursed under subsections (1)(a) and (1)(b) of this section the state  
34 treasurer shall transfer such moneys, without necessity of  
35 appropriation, to the department upon demand by the department from  
36 those trusts and accounts originally receiving the moneys.

1 (2) Money shall not be deemed to have been paid to the state upon  
2 any sale or lease of land until it has been paid to the state  
3 treasurer.

4 **Sec. 10.** RCW 43.79A.040 and 2002 c 322 s 5, 2002 c 204 s 7, and  
5 2002 c 61 s 6 are each reenacted and amended to read as follows:

6 (1) Money in the treasurer's trust fund may be deposited, invested,  
7 and reinvested by the state treasurer in accordance with RCW 43.84.080  
8 in the same manner and to the same extent as if the money were in the  
9 state treasury.

10 (2) All income received from investment of the treasurer's trust  
11 fund shall be set aside in an account in the treasury trust fund to be  
12 known as the investment income account.

13 (3) The investment income account may be utilized for the payment  
14 of purchased banking services on behalf of treasurer's trust funds  
15 including, but not limited to, depository, safekeeping, and  
16 disbursement functions for the state treasurer or affected state  
17 agencies. The investment income account is subject in all respects to  
18 chapter 43.88 RCW, but no appropriation is required for payments to  
19 financial institutions. Payments shall occur prior to distribution of  
20 earnings set forth in subsection (4) of this section.

21 (4)(a) Monthly, the state treasurer shall distribute the earnings  
22 credited to the investment income account to the state general fund  
23 except under (b) and (c) of this subsection.

24 (b) The following accounts and funds shall receive their  
25 proportionate share of earnings based upon each account's or fund's  
26 average daily balance for the period: The Washington promise  
27 scholarship account, the college savings program account, the  
28 Washington advanced college tuition payment program account, the  
29 agricultural local fund, the American Indian scholarship endowment  
30 fund, the basic health plan self-insurance reserve account, the  
31 contract harvesting revolving account, the Washington state combined  
32 fund drive account, the Washington international exchange scholarship  
33 endowment fund, the developmental disabilities endowment trust fund,  
34 the energy account, the fair fund, the fruit and vegetable inspection  
35 account, the game farm alternative account, the grain inspection  
36 revolving fund, the juvenile accountability incentive account, the  
37 rural rehabilitation account, the stadium and exhibition center

1 account, the youth athletic facility account, the self-insurance  
2 revolving fund, the sulfur dioxide abatement account, and the  
3 children's trust fund. However, the earnings to be distributed shall  
4 first be reduced by the allocation to the state treasurer's service  
5 fund pursuant to RCW 43.08.190.

6 (c) The following accounts and funds shall receive eighty percent  
7 of their proportionate share of earnings based upon each account's or  
8 fund's average daily balance for the period: The advanced right of way  
9 revolving fund, the advanced environmental mitigation revolving  
10 account, the city and county advance right-of-way revolving fund, the  
11 federal narcotics asset forfeitures account, the high occupancy vehicle  
12 account, the local rail service assistance account, and the  
13 miscellaneous transportation programs account.

14 (5) In conformance with Article II, section 37 of the state  
15 Constitution, no trust accounts or funds shall be allocated earnings  
16 without the specific affirmative directive of this section.

17 **Sec. 11.** RCW 84.33.078 and 1986 c 65 s 1 are each amended to read  
18 as follows:

19 When any timber standing on public land, other than federally owned  
20 land, is sold separate from the land, the department of natural  
21 resources or other governmental unit, as appropriate, shall state in  
22 its notice of the sale or prospectus that timber sold separate from the  
23 land is subject to property tax and that the amount of the tax paid may  
24 be used as a credit against any tax imposed with respect to business of  
25 harvesting timber from publicly owned land under RCW 84.33.041. If the  
26 timber from public land is harvested by the state, its departments and  
27 institutions and political subdivisions, or any municipal corporation  
28 therein, the governmental unit, or governmental units, that harvest or  
29 market the timber must provide the harvester purchasing the timber with  
30 its harvesting and marketing costs as defined in RCW 84.33.035(7).

31 **Sec. 12.** RCW 84.33.035 and 2001 c 249 s 1 and 2001 c 97 s 1 are  
32 each reenacted and amended to read as follows:

33 Unless the context clearly requires otherwise, the definitions in  
34 this section apply throughout this chapter.

35 (1) "Agricultural methods" means the cultivation of trees that are  
36 grown on land prepared by intensive cultivation and tilling, such as



1 irrigating, plowing, or turning over the soil, and on which all  
2 unwanted plant growth is controlled continuously for the exclusive  
3 purpose of raising trees such as Christmas trees and short-rotation  
4 hardwoods.

5 (2) "Average rate of inflation" means the annual rate of inflation  
6 as determined by the department averaged over the period of time as  
7 provided in RCW 84.33.220 (1) and (2). This rate shall be published in  
8 the state register by the department not later than January 1st of each  
9 year for use in that assessment year.

10 (3) "Composite property tax rate" for a county means the total  
11 amount of property taxes levied upon forest lands by all taxing  
12 districts in the county other than the state, divided by the total  
13 assessed value of all forest land in the county.

14 (4) "Forest land" is synonymous with "designated forest land" and  
15 means any parcel of land that is twenty or more acres or multiple  
16 parcels of land that are contiguous and total twenty or more acres that  
17 is or are devoted primarily to growing and harvesting timber.  
18 Designated forest land means the land only and does not include a  
19 residential homesite. The term includes land used for incidental uses  
20 that are compatible with the growing and harvesting of timber but no  
21 more than ten percent of the land may be used for such incidental uses.  
22 It also includes the land on which appurtenances necessary for the  
23 production, preparation, or sale of the timber products exist in  
24 conjunction with land producing these products.

25 (5) "Harvested" means the time when in the ordinary course of  
26 business the quantity of timber by species is first definitely  
27 determined. The amount harvested shall be determined by the Scribner  
28 Decimal C Scale or other prevalent measuring practice adjusted to  
29 arrive at substantially equivalent measurements, as approved by the  
30 department.

31 (6) "Harvester" means every person who from the person's own land  
32 or from the land of another under a right or license granted by lease  
33 or contract, either directly or by contracting with others for the  
34 necessary labor or mechanical services, fells, cuts, or takes timber  
35 for sale or for commercial or industrial use. When the United States  
36 or any instrumentality thereof, the state, including its departments  
37 and institutions and political subdivisions, or any municipal  
38 corporation therein so fells, cuts, or takes timber for sale or for

1 commercial or industrial use, the harvester is the first person other  
2 than the United States or any instrumentality thereof, the state,  
3 including its departments and institutions and political subdivisions,  
4 or any municipal corporation therein, who acquires title to or a  
5 possessory interest in the timber. The term "harvester" does not  
6 include persons performing under contract the necessary labor or  
7 mechanical services for a harvester.

8 (7) "Harvesting and marketing costs" means only those costs  
9 directly associated with harvesting the timber from the land and  
10 delivering it to the buyer and may include the costs of disposing of  
11 logging residues. Any other costs that are not directly and  
12 exclusively related to harvesting and marketing of the timber, such as  
13 costs of permanent roads or costs of reforesting the land following  
14 harvest, are not harvesting and marketing costs.

15 (8) "Incidental use" means a use of designated forest land that is  
16 compatible with its purpose for growing and harvesting timber. An  
17 incidental use may include a gravel pit, a shed or land used to store  
18 machinery or equipment used in conjunction with the timber enterprise,  
19 and any other use that does not interfere with or indicate that the  
20 forest land is no longer primarily being used to grow and harvest  
21 timber.

22 (9) "Local government" means any city, town, county, water-sewer  
23 district, public utility district, port district, irrigation district,  
24 flood control district, or any other municipal corporation, quasi-  
25 municipal corporation, or other political subdivision authorized to  
26 levy special benefit assessments for sanitary or storm sewerage  
27 systems, domestic water supply or distribution systems, or road  
28 construction or improvement purposes.

29 (10) "Local improvement district" means any local improvement  
30 district, utility local improvement district, local utility district,  
31 road improvement district, or any similar unit created by a local  
32 government for the purpose of levying special benefit assessments  
33 against property specially benefited by improvements relating to the  
34 districts.

35 (11) "Owner" means the party or parties having the fee interest in  
36 land, except where land is subject to a real estate contract "owner"  
37 means the contract vendee.

1 (12) "Primarily" or "primary use" means the existing use of the  
2 land is so prevalent that when the characteristic use of the land is  
3 evaluated any other use appears to be conflicting or nonrelated.

4 (13) "Short-rotation hardwoods" means hardwood trees, such as but  
5 not limited to hybrid cottonwoods, cultivated by agricultural methods  
6 in growing cycles shorter than fifteen years.

7 (14) "Small harvester" means every person who from his or her own  
8 land or from the land of another under a right or license granted by  
9 lease or contract, either directly or by contracting with others for  
10 the necessary labor or mechanical services, fells, cuts, or takes  
11 timber for sale or for commercial or industrial use in an amount not  
12 exceeding two million board feet in a calendar year. When the United  
13 States or any instrumentality thereof, the state, including its  
14 departments and institutions and political subdivisions, or any  
15 municipal corporation therein so fells, cuts, or takes timber for sale  
16 or for commercial or industrial use, not exceeding these amounts, the  
17 small harvester is the first person other than the United States or any  
18 instrumentality thereof, the state, including its departments and  
19 institutions and political subdivisions, or any municipal corporation  
20 therein, who acquires title to or a possessory interest in the timber.  
21 Small harvester does not include persons performing under contract the  
22 necessary labor or mechanical services for a harvester, and it does not  
23 include the harvesters of Christmas trees or short-rotation hardwoods.

24 (15) "Special benefit assessments" means special assessments levied  
25 or capable of being levied in any local improvement district or  
26 otherwise levied or capable of being levied by a local government to  
27 pay for all or part of the costs of a local improvement and which may  
28 be levied only for the special benefits to be realized by property by  
29 reason of that local improvement.

30 (16) "Stumpage value of timber" means the appropriate stumpage  
31 value shown on tables prepared by the department under RCW 84.33.091,  
32 provided that for timber harvested from public land and sold under a  
33 competitive bidding process, stumpage value shall mean the actual  
34 amount paid to the seller in cash or other consideration. The stumpage  
35 value of timber from public land does not include harvesting and  
36 marketing costs if the timber from public land is harvested by, or  
37 under contract for, the United States or any instrumentality of the  
38 United States, the state, including its departments and institutions

1 and political subdivisions, or any municipal corporation therein.  
2 Whenever payment for the stumpage includes considerations other than  
3 cash, the value shall be the fair market value of the other  
4 consideration. If the other consideration is permanent roads, the  
5 value of the roads shall be the appraised value as appraised by the  
6 seller.

7 (17) "Timber" means forest trees, standing or down, on privately or  
8 publicly owned land, and except as provided in RCW 84.33.170 includes  
9 Christmas trees and short-rotation hardwoods.

10 (18) "Timber assessed value" for a county means a value, calculated  
11 by the department before October 1st of each year, equal to the total  
12 stumpage value of timber harvested from privately owned land in the  
13 county during the most recent four calendar quarters for which the  
14 information is available multiplied by a ratio. The numerator of the  
15 ratio is the rate of tax imposed by the county under RCW 84.33.051 for  
16 the year of the calculation. The denominator of the ratio is the  
17 composite property tax rate for the county for taxes due in the year of  
18 the calculation, expressed as a percentage of assessed value.

19 (19) "Timber assessed value" for a taxing district means the timber  
20 assessed value for the county multiplied by a ratio. The numerator of  
21 the ratio is the total assessed value of forest land in the taxing  
22 district. The denominator is the total assessed value of forest land  
23 in the county. As used in this section, "assessed value of forest  
24 land" means the assessed value of forest land for taxes due in the year  
25 the timber assessed value for the county is calculated.

26 (20) "Timber management plan" means a plan prepared by a trained  
27 forester, or any other person with adequate knowledge of timber  
28 management practices, concerning the use of the land to grow and  
29 harvest timber. Such a plan includes:

30 (a) A legal description of the forest land;

31 (b) A statement that the forest land is held in contiguous  
32 ownership of twenty or more acres and is primarily devoted to and used  
33 to grow and harvest timber;

34 (c) A brief description of the timber on the forest land or, if the  
35 timber on the land has been harvested, the owner's plan to restock the  
36 land with timber;

37 (d) A statement about whether the forest land is also used to graze  
38 livestock;

1 (e) A statement about whether the land has been used in compliance  
2 with the restocking, forest management, fire protection, insect and  
3 disease control, and forest debris provisions of Title 76 RCW; and

4 (f) If the land has been recently harvested or supports a growth of  
5 brush and noncommercial type timber, a description of the owner's plan  
6 to restock the forest land within three years.

7 NEW SECTION. **Sec. 13.** The department of natural resources must  
8 provide a report to the appropriate committees of the legislature  
9 concerning the costs and effectiveness of the contract harvesting  
10 program. The report must be submitted by December 31, 2006.

11 NEW SECTION. **Sec. 14.** Sections 2 through 5 of this act constitute  
12 a new chapter in Title 79 RCW.

13 NEW SECTION. **Sec. 15.** (1) The sum of two hundred fifty thousand  
14 dollars, or as much thereof as may be necessary, is appropriated for  
15 the biennium ending June 30, 2005, from the resource management cost  
16 account to the contract harvesting revolving account for the purposes  
17 of this act.

18 (2) The sum of two hundred fifty thousand dollars, or as much  
19 thereof as may be necessary, is appropriated for the biennium ending  
20 June 30, 2005, from the forest development account to the contract  
21 harvesting revolving account for the purposes of this act.

22 NEW SECTION. **Sec. 16.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

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