
SECOND SUBSTITUTE SENATE BILL 5074

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Morton, Oke, Doumit, T. Sheldon, Fraser and Rasmussen; by request of Commissioner of Public Lands)

READ FIRST TIME 02/19/03.

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; and creating new sections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 If any land acquired by a county through foreclosure of tax liens,
32 or otherwise, comes within the classification of land described in RCW
33 76.12.020 and can be used as state forest land and if the department
34 deems such land necessary for the purposes of this chapter, the county
35 shall, upon demand by the department, deed such land to the department
36 and the land shall become a part of the state forest lands.

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

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

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

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

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

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

32 Except as provided in RCW 79.12.035, all money derived from the
33 sale of timber or other products, or from lease, or from any other
34 source from the land, except where the Constitution of this state or
35 RCW 76.12.030 requires other disposition, shall be disposed of as
36 follows:

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

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

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

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

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

1 waters, and fifty percent of the moneys received by the department
2 pertaining to second class tide and shore lands and the beds of
3 navigable waters.

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

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

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

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

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

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

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

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

1 **Sec. 10.** RCW 43.79A.040 and 2002 c 322 s 5, 2002 c 204 s 7, and
2 2002 c 61 s 6 are each reenacted and amended to read as follows:

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

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

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

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

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

1 first be reduced by the allocation to the state treasurer's service
2 fund pursuant to RCW 43.08.190.

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

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

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

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

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

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

32 (1) "Agricultural methods" means the cultivation of trees that are
33 grown on land prepared by intensive cultivation and tilling, such as
34 irrigating, plowing, or turning over the soil, and on which all
35 unwanted plant growth is controlled continuously for the exclusive

1 purpose of raising trees such as Christmas trees and short-rotation
2 hardwoods.

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

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

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

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

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

1 including its departments and institutions and political subdivisions,
2 or any municipal corporation therein, who acquires title to or a
3 possessory interest in the timber. The term "harvester" does not
4 include persons performing under contract the necessary labor or
5 mechanical services for a harvester.

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

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

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

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

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

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

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

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

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

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

1 consideration. If the other consideration is permanent roads, the
2 value of the roads shall be the appraised value as appraised by the
3 seller.

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

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

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

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

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

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 15.** 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.

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