

HOUSE BILL REPORT

SHB 1909

As Amended by the Senate

Title: An act relating to specialized forest products.

Brief Description: Protecting from the theft of specialized forest products.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Orcutt, B. Sullivan, Roach, Blake, Takko, Pearson, Kristiansen and Hinkle).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/13/07, 2/26/07 [DPS].

Floor Activity:

Passed House: 4/19/07, 96-0.

Senate Amended.

Passed Senate: 4/5/07, 45-1.

Brief Summary of Substitute Bill

- Makes a number of changes to the definitions in the law on the harvest, possession, or transport of specialized forest products.
- Provides distinct harvest and possession requirements for specialty wood.
- Removes the authority of law enforcement to confiscate the vehicle or equipment of someone suspected of violating the law on specialized forest products.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, Lantz, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

Staff: Jason Callahan (786-7117).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A specialized forest product (SFP) is, generally, an item found in the forest with a value other than that found with traditional timber. The term SFP is defined to include native shrubs, cedar products, cedar salvage, processed cedar products, specialty wood, edible mushrooms, and certain barks. Many of these terms are further defined, to include items such as certain logs or slabs of cedar, spruce, maple, and alder, along with cedar shakes and fence posts.

A SFP permit, or a true copy of the permit, is required in order to possess or transport the following:

- a cedar product or cedar salvage;
- specialty wood;
- more than five Christmas trees or native ornamental trees or shrubs;
- more than five pounds of picked foliage, or Cascara bark; and
- more than five gallons of a single mushroom species.

The SFP permit must be obtained prior to harvesting or collecting the products, even from one's own land, and is available only from county sheriffs, on forms provided by the Department of Natural Resources (DNR). The permit must be validated by a sheriff.

For cedar and specialty wood, a processor must keep records for one year of the purchase, and have a bill of lading available to accompany all cedar or specialty wood products.

Violations of the law on SFPs are punishable as a gross misdemeanor, and a convicted individual may face a fine up to \$1,000 and/or up to one year in a county jail. In addition, a law enforcement officer with probable cause may seize and take possession of any SFPs found, and if the product seized was cedar or specialty wood, may also seize any equipment, vehicles, tools, or paperwork.

Summary of Substitute Bill:

Intent

The Legislature states intent for law enforcement to prosecute those legitimately stealing SFPs, while not enforcing against small actors who are responsibly collecting SFPs from willing landowners. Prosecutorial discretion is urged.

Definitions

A number of definition changes are made to the law on SFPs, including:

- removing carvers from the definition of a "cedar processor;"
- removing scotch broom from the definition of "cut or picked evergreen foliage;"
- defining a "harvest site" as an area where two or more harvesters can work close enough to allow conversation, as opposed to a harvester and a law enforcement official;
- removing rounds sized less than a foot from the definition of "processed cedar products;"
- removing "specialty wood" from the definition of "specialized forest products; and

- removing alder and wood suitable for use in making a box from the definition of "specialty wood."

Specialized Forest Product Permits

The county sheriff that is authorized to issue a SFP permit is expanded to include the sheriff of the county where the harvester lives and the county where the wood will be harvested from. The actual scope of the permit is reduced so that a permit is not needed to transport processed cedar or specialty wood, and the permit is not required after a cedar processor or buyer has taken possession of the SFP.

Specialty Wood

Specialty wood is no longer included in the definition of a SFP, and a SFP permit is not required to harvest or possess specialty wood. However, an individual must obtain a bill of sale prior to harvesting any specialty wood. The bill of sale becomes the authorization to harvest, possess, or transfer the specialty wood.

Any specialty wood processor must obtain a bill of sale for the specialty wood at all times prior to the retail sale of the specialty wood, and display a valid registration certificate issued by the Department of Revenue. A specialty wood purchaser must record information about the purchase and make all records available to law enforcement when requested.

Confiscations

The ability for law enforcement to confiscate the vehicles or equipment of a person suspected of violating the law on SFPs is removed. Confiscation of the actual SFP or specialty wood is still allowed; however, if a law enforcement officer chooses to not seize the suspected unlawful SFP or specialty wood, the officer may make note of the product's detail and, upon conviction, the suspect will be required to pay the rightful owner of the SFP or specialty wood three times its appraised value.

EFFECT OF SENATE AMENDMENT(S):

Removes the underlying bill in its entirety and replaces it with: an affirmative defense for individuals prosecuted for a violation of the specialized forest products laws if the defendant obtained the specialized forest products with the permission of the owner; the creation of a forest products work group to be staffed by the Department of Natural Resources to make recommendations on changes to the current specialized forest products laws; a requirement that a person must have a specialized forest products permit before harvesting more than three gallons of huckleberries from land not owned by the harvester, and a prohibition on the use of a rake or mechanical device to harvest huckleberries.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Citizens are being arrested and prosecuted for possessing small amounts of wood that they are lawfully entitled to own. Wood deemed unlawful often comes from home maintenance, wind storm clean up, and donors who have no other way to dispose of the wood. Current law requires a permit for any wood that can be made into a box, even if it is a very small box. Permits are often difficult and inconvenient to obtain. It should not be illegal for innocent people to possess wood.

Valuable wood is being confiscated, and law enforcement uses the threat of confiscation of vehicles and equipment to coerce compliance with their requests.

Wood carving and wood turning are cultural traditions in the Northwest. The participants are also taxpayers and business owners. The current law puts these practices into jeopardy. The current law imposes unreasonable burdens on the casual movement of wood. In retail products, there is an assumption that a sweater or stereo is not stolen until it is proven that it has been. The same should be true for specialized forest products.

(With concerns) Unintended consequences have occurred, but 40 years of progress should not be thrown away. There should be a comprehensive review by all involved and affected by the specialized forest products law.

(Opposed) This bill simply makes the theft of specialized forest products easier by creating the opportunity for the scofflaw to play shell games where criminal activity is hidden behind fraudulent documents. Law enforcement would never know for sure if documents presented were legitimate, and the bill would make the law on specialized forest products impossible to enforce.

Persons Testifying: (In support) Representative Orcutt, prime sponsor; Donna Quezada, Creative Wood Sculptures and WashingtonWoodLaws.org; Bob Sweazy, Evergreen Woodworkers Guild and South Puget Sound Wood Turners; Lawrence Bonn, Evergreen Woodworkers Guild; and John Merchant, American Association of Wood Turners.

(With concerns) Howard Thronson, Department of Natural Resources; Debora Munguia, Washington Forest Protection Association; and Kristen Sawin, Weyerhaeuser Company.

(Opposed) Mike Whelan and Matt Stowers, Grays Harbor County Sheriff's Office.

Persons Signed In To Testify But Not Testifying: None.