FINAL BILL REPORT
SHB 1909

C 392 L 07
Synopsis as Enacted

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).

House Committee on Agriculture & Natural Resources
Senate Committee on Natural Resources, Ocean & Recreation

Background:

Specialized Forest Products.

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

Violations of the law on SFPs is 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, tool, or paperwork.

Affirmative Defenses.

In a criminal prosecution, often times an affirmative defense is available to the defendant. An affirmative defense is a defense to the charges that the defendant has the responsibility to prove. This can be contrasted with the elements of the crime, which the prosecution has the burden to prove.

A fully proven affirmative defense can lead to the avoidance of a guilty verdict, even if the prosecution has proven all elements of the crime beyond a reasonable doubt.

Summary:

Affirmative Defense.

An affirmative defense is available to a person being prosecuted under the SFP laws if the SFPs in question were harvested from the defendant's own land or if the SFPs in question were harvested with the permission of the landowner. The burden of proving the defense rests with the defendant, who must establish the defense by a preponderance of the evidence.

Specialized Forest Products Work Group.

The SFP Work Group (Work Group) is established to be staffed by the DNR and to consist of representation from the DNR, county sheriffs, prosecutors, forest landowners, tribes, wood carvers, cedar processors, and other participants invited by the Commissioner of Public Lands.

The Work Group must review the SFP statutes and current law dealing with theft and make recommendations relating to SFP regulations. The recommendations must provide tools for law enforcement, provide protection for landowners, not be overly burdensome, be clear, and be able to be administered consistently statewide.

A report from the Work Group, along with draft legislation, is due by December 1, 2007.

Huckleberries.

The use of a rake or other mechanical device for the harvest of huckleberries is prohibited.

The DNR is required to review the uses of the state's huckleberry resources. The review must include an analysis of the demand, whether current use levels are sustainable, and whether the various uses of the resource are compatible. Based on the review, the DNR must report findings and recommendations by the end of the year as to whether there should be a state permitting requirement for huckleberry harvest, whether huckleberries should be considered an SFP, and what conditions should be placed on huckleberry harvests.

Votes on Final Passage:

House	96	0	
Senate	45	1	(Senate amended)
House			(House refused to concur)
Senate			(Senate refused to recede)
House			(House refused to recede)

Senate	46	0	(Senate amended)
House	98	0	(House concurred)

Effective: July 22, 2007