

SENATE BILL REPORT

SHB 1038

As of March 19, 2009

Title: An act relating to forest products addressed by chapter 76.48 RCW.

Brief Description: Regarding specialized forest products.

Sponsors: House Committee on General Government Appropriations (originally sponsored by Representatives Orcutt, Blake, Kretz, Van De Wege, Warnick, McCune, Pearson, Kristiansen and Kessler).

Brief History: Passed House: 3/06/09, 97-0.

Committee Activity: Natural Resources, Ocean & Recreation: 3/19/09.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Sherry McNamara (786-7402)

Background: Specialized Forest Products. Current law sets out a series of requirements for the harvest, possession, transportation, purchase, and receipt of specified amounts of forest materials. These materials, known as specialized forest products (SFP), include specified amounts of cedar, specialty wood, cut or picked evergreen foliage, and other forest products.

A SFP permit is required in order to sell wild huckleberries or possess or transport the following:

- a cedar product or cedar salvage;
- a 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.

A person must obtain a SFP permit, validated by the county sheriff, prior to harvesting or collecting the products, even from one's own land, and available only from county sheriffs on forms provided by the Department of Natural Resources (DNR). After harvesting or collecting, a person may not possess or transport such products without either a permit, a written authorization, a sales invoice, or a bill of lading evidencing the person's authority to possess or transport the materials.

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.

Enforcement. A violation of the SFP statutes is punishable as a gross misdemeanor. Violators may face up to one year in the county jail and/or a fine of not more than \$1,000. In addition, a law enforcement officer with probable cause may seize and take possession of any SFPs found. If the product seized was cedar or specialty wood, the officer may also seize any equipment, vehicles, tools, or paperwork.

An affirmative defense is available to a person being prosecuted under the SFP laws. The defendant must establish, by a preponderance of the evidence, that the specialized forest products were harvested from the defendant's land or that the specialized forest products were harvested with the permission of the landowner.

SFP Work Group. In 2007 the Legislature required DNR to establish a work group to review the SFP statutes and make recommendations for legislative action. A report from the SFP Work Group, along with recommended legislation, was submitted in December 2008.

Summary of Bill: SFP Definitions. The threshold required for a SFP permit to cut or pick evergreen foliage is increased from five pounds to 20 pounds. Scotch broom and all noxious weeds are eliminated from the list of species that qualify as a SFP. Clarification is provided that domestic mushrooms do not qualify as a SFP.

The definition of specialty wood is changed to mean red cedar, Englemann spruce, Sitka spruce, big leaf maple wood, or western red alder that is capable of being cut into a knot-free segment measuring 19 inches in length, 7 1/4 inches or greater in width, and more than 1 3/4 inches thick.

Cedar products that require a SFP permit are defined as products made from the wood of a cedar tree, including a western red cedar such as shake and shingle bolts, fence posts and rails, logs, and pieces measuring 15 inches or longer. Artistic cedar products and processed cedar products are excluded from this definition.

Common names are provided for the species of huckleberries which require a SFP permit to be sold.

SFP Permits. Two SFP permits are created: a validated permit or a verifiable permit. A validated permit must be validated by a sheriff's office prior to the harvest or transport of a SFP.

A verifiable permit must be obtained before harvest or transport, but does not have to be presented to the sheriff's office until five days after the harvest or transport of the SFPs. At that time, the verifiable permit must be hand delivered or mailed to the appropriate sheriff's office.

The landowner granting permission to harvest on that landowner's lands may require the permittee to use only one of the permitting options. However, huckleberry sales must be conducted with a validated permit.

Forms for both permit types require similar information and must be provided by DNR. Both forms require the type of SFP to be harvested, the contact information for the harvester and

the landowner, a description of landmarks near the harvest site, and the approximate amount of SFPs to be harvested.

In addition, the validated form must include the parcel number or legal description of the property from where the SFPs will be harvested and a copy of a valid photo identification. The verifiable permit must include the parcel number or the street address; whether the harvest site is less than one acre; evidence of ownership from the county assessor; and a unique state identification number for both the harvester and the landowner.

SFP Permit Exemptions. Exemptions to SFP permitting requirements include: specialty wood and evergreen foliage harvested under a valid DNR Forest Practices Application (FPA); harvest and transport of a SFP by a governmental entity or its agent to maintain a right-of-way; and the work of a utility for maintaining its right-of-way.

SFPs imported from out-of-state are not subject to permitting requirements as long as the person with the product has a bill of lading or government-issued documentation from a Canadian province or another state indicating the SFP's origin.

Buyer's Responsibilities. A distinction is made between the first buyer of a SFP and all subsequent buyers. The first SFP buyer must record the number of the SFP permit presented by the seller.

All SFP buyers must record whether the product was accompanied by a bill of lading or other documentation, the type and amount of SFP purchased, the name of the seller, the date of delivery, the name of the person driving the vehicle delivering the SFP, and the license plate number of the vehicle. All SFP buyers must show a master business license issued by the Department of Licensing at their place of business.

Enforcement. Custody of SFPs and related items can be initiated by law enforcement during an investigation with probable cause that a violation of the SFP permitting laws occurred. If no arrest is made, the detained materials are to be returned. If an arrest follows the investigation, SFPs and related items may be seized and held during the trial. Perishable products may be sold by law enforcement, with the proceeds maintained until after the outcome of the trial.

It is a class C felony if an individual shows forged documents when selling SFPs. In addition, a presiding court may order a suspension of a person's privilege to obtain a SFP permit after the third conviction of a SFP-related offense.

Outreach and Education Account. The SFP Outreach and Education Account (Account) is created. Monies in the account can be used by DNR to develop educational material and outreach to minority groups. The Account receives one-third of any money collected from fines issued for SFP violations or from the final proceeds of any sales of SFP-related products that are confiscated. This money is redirected from the general fund of the county in which the case was prosecuted.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The SFP Work Group (Work Group) spent long hours and a lot of hard work to come to consensus on this legislation. The Work Group's goals were to provide a SFP law that was easier to understand and easier to enforce, balance a permitting process that wouldn't be too burdensome with protecting landowners from theft, and that could be administered consistently throughout the state. This bill allows people to obtain a SFP verifiable permit, which will save them time and money in not having to travel back and forth to the local sheriff's office. This bill will hopefully make the permitting process accessible statewide and clear up the confusion about when a person needs to have a permit to transport SFPs. The bill is not perfect, but it is a start and something the Work Group members could live with. The Work Group prefers the original bill to this substitute version.

Persons Testifying: PRO: Representative Orcutt, prime sponsor; Craig Partridge, DNR; Donna Quezada, Creative Wood Sculptures and Chain Saw Carvers of Washington State; Patti Case, Green Diamond Resource Company.