

HOUSE BILL REPORT

HB 1710

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to limiting appeals related to the harvest of damaged forest products.

Brief Description: Limiting appeals related to the harvest of damaged forest products.

Sponsors: Representatives Kretz, Blake, Schmick, Short and Condotta.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/14/17, 2/16/17 [DP].

Brief Summary of Bill

- Exempts the sale of perishable fire-damaged timber on state lands from compliance with the State Environmental Policy Act.
- Exempts the sale of perishable fire-damaged timber on state lands from review under the Administrative Procedure Act and the forest practices rules.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 12 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Kretz, Orcutt, Pettigrew, Robinson, Schmick, Springer and J. Walsh.

Minority Report: Do not pass. Signed by 3 members: Representatives Fitzgibbon, Lytton and Stanford.

Staff: Robert Hatfield (786-7117).

Background:

State Trust Lands.

The Department of Natural Resources (DNR) manages 5.6 million acres of forest, range, agricultural, aquatic, and commercial lands in Washington. The DNR manages approximately 2.3 million acres of forested state trust lands. Under a mix of authorities,

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including state law, the state Constitution, and the state's federal Enabling Act, these state trust lands are held by the state for specified trust beneficiaries. In total, there are 18 trust beneficiaries that derive some level of economic benefit from the management of these trust lands, which include common schools, the state universities, community colleges, counties, and the state's capital budget.

Board of Natural Resources.

The Board of Natural Resources (Board) sets policies to guide how the DNR manages the state's lands and resources. Created in 1957, the Board was formed with the DNR and has several responsibilities: (1) approve or disapprove trust land timber and mineral sales; (2) establish the sustainable harvest level for forested trust lands; (3) approve or disapprove sales or exchanges of trust lands; and (4) guide the DNR's stewardship of state Natural Area Preserves, Natural Resources Conservation Areas, and aquatic or submerged lands.

State Lands-Salvage of Damaged Materials.

When the DNR finds certain valuable materials on state lands that have been damaged, the DNR must consider whether it is in the best interest of the DNR's trust obligations to salvage the damage material. If salvaging the damaged valuable material is in the best interest of the trust, the DNR must offer the materials for sale.

Forest Practices Applications.

A forest practices application (FPA) must be approved by the DNR prior to conducting a forest practice such as tree thinning, chemical application, forest road building, or tree harvest. The FPA is submitted to the DNR, and if approved, the FPA is valid for a period of two years from the date of approval.

The Pollution Control Hearings Board.

The Pollution Control Hearings Board (PCHB) is an administrative appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by certain state agencies. These include the DNR for FPAs. Parties aggrieved by a PCHB decision may obtain subsequent judicial review in superior court.

The Administrative Procedure Act.

The Administrative Procedure Act (APA) sets the process that state agencies must use when the agency takes administrative action. Individuals appealing agency actions must generally exhaust their administrative remedies with the agency prior to seeking judicial review in superior court. Agencies offer administrative hearings that are quasi-judicial to hear appeals of agency actions. Administrative hearings adjudicate appeals by interpreting agency policy and regulations. Adjudication resembles what a court does, but it is less formal. Adjudicative proceedings determine legal rights, duties, or privileges when a hearing is required by law or by the Constitution.

The State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state agencies and local governments to identify possible environmental impacts that may result from non-exempted government actions. The actions include 'project' actions involving decisions on specific projects, such as the issuance of a permit, and 'nonproject' actions involving decisions on policies and plans, including the adoption of land use plans and regulations.

The information collected through the SEPA review process may be used to change a proposal to mitigate likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

Summary of Bill:

The DNR's decision to salvage and sell perishable fire-damaged timber is final, is not subject to appeal, either to superior court under the Administrative Procedure Act or to the Pollution Control Hearings Board under the forest practices rules, and may not be the basis for any civil cause of action.

The sale of perishable fire-damaged timber is unlikely to result in significant adverse impacts to the environment and is therefore not subject to the requirements of the SEPA. Decisions related to the sale of perishable fire-damaged timber, including decisions on forest practices applications and decisions related to the construction of temporary roads, are also exempt from review under the SEPA.

"Perishable fire-damaged timber" is defined to mean timber and associated forest products that have been damaged by wildfire on any state lands, and that are likely to diminish in market value if not harvested promptly.

Appropriation: None.

Fiscal Note: Requested on February 10, 2017.

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

Staff Summary of Public Testimony:

(In support) There are many fire issues around the state. It is important to improve the value of timber, for the benefit of the trust. There is a short window of time to harvest timber after it has been damaged by a fire. Under current law, appeals can be filed and whether they are well-founded or not, they can delay a sale, and the timber will lose its value before the appeal is heard. It is still important for the DNR to perform environmental analysis.

Logging is often restricted during a bad fire season, so mills will run out of logs by the end of the fire season; the mills need logs in the yard to keep working. After a fire, timber must go to a mill within two years before it loses its value. There is not much environmental value in leaving burned timber lying around. It will take some trust in the DNR to walk away from the State Environmental Policy Act review process.

The United States Department of Agriculture published a study on salvage logging which indicated that salvage logging created less damage than fire, and that the plant community in

forests responded more dramatically to fire than to logging. One logging company saw that sediment loading in streams decreased at salvage logging sites. The environmental impact of salvage logging is not high, despite what the public may feel. Prioritizing rural jobs is important.

(Opposed) None.

Persons Testifying: Representative Kretz, prime sponsor; Tim Boyd, Vaagen Brothers Lumber and Boise Cascade; and Mary Catherine McAleer, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.