

# HOUSE BILL REPORT

## 2SHB 2481

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### As Passed Legislature

**Title:** An act relating to the department of natural resources authority to enter into forest biomass supply agreements.

**Brief Description:** Authorizing the department of natural resources to enter into forest biomass supply agreements.

**Sponsors:** House Committee on General Government Appropriations (originally sponsored by Representatives Van De Wege, Kretz, Blake, Hinkle, Ormsby, Dunshee, McCoy, Eddy, Upthegrove, Carlyle, Haler, Morrell, Warnick and Kessler; by request of Commissioner of Public Lands).

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 1/13/10, 1/20/10 [DPS];

General Government Appropriations: 2/2/10, 2/4/10 [DP2S(w/o sub TEC)].

**Floor Activity:**

Passed House: 2/13/10, 92-0.

Senate Amended.

Passed Senate: 3/3/10, 47-0.

House Concurred.

Passed House: 3/6/10, 94-1.

Passed Legislature.

#### Brief Summary of Second Substitute Bill

- Authorizes the Department of Natural Resources (DNR) to maintain a list of all potential sources of forest biomass on state lands for the purposes of making biomass available for sale and conversion into energy, biofuels, and for use in a biorefinery.
- Authorizes the DNR to enter into contracts for the removal of forest biomass.
- Authorizes the DNR to lease state lands for the sale and conversion of biomass into energy or biofuels.
- Requires the DNR to evaluate how the forest biomass supply agreements could be used to sustain or create rural jobs and timber manufacturing

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*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.*

infrastructure, and to sell state timber to traditional types of timber purchasers.

- Authorizes the DNR to establish a five-year forest health and fuel reduction supply agreement demonstration project for the purposes of proving the concepts in the evaluation.

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## HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives McCoy, Chair; Finn, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Condotta, Eddy, Hasegawa, Hinkle, Hudgins, Jacks, Morris, Nealey, Takko, Taylor and Van De Wege.

**Minority Report:** Do not pass. Signed by 1 member: Representative McCune.

**Staff:** Scott Richards (786-7156).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; Armstrong, Assistant Ranking Minority Member; Blake, Crouse, Dunshee, Hudgins, Kenney, Klippert, Pedersen, Sells, Short, Van De Wege and Williams.

**Minority Report:** Do not pass. Signed by 1 member: Representative McCune, Ranking Minority Member.

**Staff:** Owen Rowe (786-7391).

### **Background:**

#### State Trust Lands.

The Department of Natural Resources (DNR) manages 5.6 million acres of forest, range, agricultural, aquatic, and commercial lands for the people of Washington. The DNR supports income generation on the 3 million acres of state trust lands statewide. Of these, 2.1 million acres are forests and 1.2 million are agricultural, grazing, and range lands (420,000 acres of range are also counted as forest). The DNR provides oversight on state-owned trust lands in the areas of: timber sales; agriculture leasing; commercial real estate; rock, sand, and gravel; minerals and mining; oil and gas exploration; communication sites; rights of way; and specialized forest products.

Due to a mix of authorities, including state law, the state Constitution, and the state's federal Enabling Act, these lands are held by the state in trust 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. The beneficiaries include common schools, the state universities, community colleges, counties, and the state's Capital Budget.

#### Sale of Valuable Materials from State Forest Lands.

The DNR sells the majority of timber from state forest lands by putting tracts of timber up for bid. The DNR establishes an appraised value for the timber based on current market prices, and this value becomes the minimum bid for the timber sale. The successful bidder who is awarded the contract generally has three years to harvest the timber from the sale.

Under current law, the DNR has the authority to directly contract for the harvest of up to 20 percent of the total annual volume of timber offered for sale from state forest lands. All receipts from the gross proceeds of logs that are harvested under the contract harvesting program are deposited into the Contract Harvest Revolving Account (Account). The Board of Natural Resources has oversight of the Account. Monies in the Account in excess of \$5 million must be disbursed to the trust beneficiaries in accordance with existing procedures.

#### Forest Biomass Demonstration Projects.

In 2009 the Legislature authorized the DNR to develop and implement two forest biomass energy demonstration projects: one east of the crest of the Cascade mountains and one west of the crest of the Cascade mountains. The demonstration projects must be designed to:

- reveal the utility of Washington's public and private forest biomass feedstock;
- create green jobs and generate renewable energy;
- generate revenues or improve asset values for beneficiaries of state lands and state forest lands;
- improve forest health, reduce pollution, and restore ecological function; and
- avoid interfering with the current working area for forest biomass collection surrounding an existing fixed location biomass energy production site.

To develop and implement the forest biomass energy demonstration projects, the DNR is authorized to form forest biomass energy partnerships or cooperatives. The preferred model being public-private partnerships focused on convening the entities necessary to grow, harvest, process, transport, and utilize forest biomass to generate renewable energy.

#### **Summary of Second Substitute Bill:**

##### List and Inventory.

The DNR is authorized to maintain a list of all potential sources of forest biomass on state lands for the purposes of making biomass available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy, biofuels, for use in a biorefinery, or any other similar use.

The inventory must contain an estimated amount of the forest biomass available in the area and a determination of the ecological and operation sustainability of volumetric limit established by the biomass agreement. Prior to entering a contract or lease agreement for biomass supply, the DNR must complete an inventory of the available forest biomass in the

area that will be subject to the agreement. The pilot demonstration projects are exempt from this requirement.

In order to utilize the list to limit or terminate any agreement, the DNR must determine that the overall supply of biomass in a region or watershed has been reduced to a point that further exploration and collection of biomass may not be ecologically or operationally sustainable or might otherwise threaten long-term forest health.

#### Forest Biomass Contracts.

The DNR may enter into biomass supply contracts for a term of up to five years or upon the removal of the agreed upon volume of biomass and the completion of other conditions of the contract.

The DNR may contract for the sale of biomass as a valuable material by:

- requiring a separate bid and select the highest bidder for the forest biomass separately from the sale of valuable materials;
- expressly include forest biomass as an element of the sale of the valuable materials to be sold in the sales contracts; or
- a combination of the above two options.

The DNR may also enter into either:

- direct sales for biomass, without public auction, based upon procedures adopted by the Board of Natural Resources to ensure competitive market prices and accountability; or
- contracts for biomass at public auction or by sealed bid to the highest bidder.

The DNR may enter into contract terms up to 15 years when an entity plans and commits to a capital investment of at least \$50 million before the contract and completes that investment prior to removal of biomass under the contract. The DNR may include provisions in the contract that are periodically adjusted for market conditions. The contract is required to include provisions that allow DNR, when it is in the best interest of the trust beneficiaries, to maintain access to existing users of biomass.

The biomass volume that is conveyed under this act will not be counted toward the DNR's sustainable harvest targets, except that appraised timber sold in a conventional timber sale will count toward the target whether individual trees are used by that purchaser for timber or biomass energy.

The DNR must specify in each contract an annual volumetric limit of the total cubic volume or tons of forest biomass to be supplied from a specific unit, geographically delineated area, or region within a watershed or watersheds on an ecologically and operationally sustainable basis. The DNR must adopt general procedures for making the biomass supply availability determinations.

The DNR may unilaterally amend the volume to be supplied by providing the contracting party with a minimum of six months notice prior to reducing the contract volume to be

supplied if the DNR determines the supply has been reduced to a point that it is no longer sustainable or may adversely affect long-term forest health.

The DNR may renew the contract for up to three additional five-year periods if the DNR finds:

- a sustainable supply of biomass is available for the term of the contract;
- the payment under the contract represents the fair market value at the time of the renewal; and
- the purchaser agrees to the estimated amount of biomass material available.

#### Forest Biomass Leases.

The DNR is authorized to lease state lands for the sale, exploration, collection, processing, storage, stockpiling, and conversion of biomass into energy or biofuels, if the DNR is able to obtain a fair market rental return to the state.

Leases may be entered into by public auction or negotiation, and may be for a term of up to 50 years. Leases that involve the development of a biomass processing, biofuel manufacturing, or biomass energy production facilities, the DNR may include provisions for reduced rent until the facility is operational.

#### Evaluation and Report.

The DNR must evaluate how the supply agreements could be used to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional types of timber purchasers. The DNR must report its findings to the Legislature by December 15, 2010. The evaluation must, at a minimum, identify how such supply agreement could:

- ensure the DNR meets its fiduciary responsibility to the state's trust beneficiaries;
- restore or sustain a competitive market for state timber sales;
- generate returns for the trust that are commensurate with fluctuating market prices; and
- ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

The DNR is required to conduct a survey of scientific literature regarding the carbon neutrality of forest biomass and report to the Legislature by December 15, 2010.

#### Forest Health Supply Agreement Demonstration Project.

The DNR may establish a five-year forest health and fuel reduction supply agreement demonstration project for the purposes of proving the concepts in the evaluation.

#### Forest Biomass Definition.

The definition for "forest biomass" is moved from chapter 43.30 RCW relating to the DNR's responsibilities to chapter 79.02 RCW relating to the Public Lands Act. "Forest biomass" is defined as the by-products of: current forest management activities; current forest protection treatments prescribed or permitted under the Forest Protection Act; or the by-products of

forest health treatment prescribed or permitted under the Forest Insect and Disease Control Act. It is further specified that "forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: creosote, pentachlorophenol, or copper-chrome-arsenic; wood from existing old growth forests; wood required to be left on-site under the Forest Practices Act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 12, relating to forest biomass harvesting resulting from forest health issues, which takes effect January 1, 2014.

**Staff Summary of Public Testimony (Technology, Energy & Communications):**

(In support) In developing forest biomass energy pilot projects in Washington and engaging with forest biomass energy stakeholders, the DNR determined that for potential projects to be successful, reliable supplies of forest biomass must be secured. This bill expands the DNR's ability to enter into contracts to extract forest biomass from DNR managed lands. This policy is a good opportunity to create and maintain forestry related jobs. This bill lays the foundation for potentially using national forest lands in a similar manner.

(In support with concerns) In establishing available supply limitations for forest biomass, the DNR should address concerns about how to sustainably harvest forest biomass without depleting forest and ecological health. It is not clear how increased truck traffic related to this new activity will degrade logging roads and how will the money be raised to maintain roads in response to increased traffic.

(With concerns) In contracting for these new biomass energy activities on DNR managed forest lands, the DNR needs to be aware of existing users of forest resources and how they may be hurt by the development on this new policy.

**Staff Summary of Public Testimony (General Government Appropriations):**

(In support) This bill represents the second stage of the Department of Natural Resources' (DNR) biomass initiative. Last year, the DNR began four pilot projects to convert waste from forest operations into renewable energy products. This bill will allow the DNR to enter into long-term contracts to support the biomass industry. The proposed second substitute is a reflection of stakeholder work with industry representatives. The biomass industry is comfortable that the proposed second substitute bill will support the development of this industry.

(Opposed) The bill talks about biomass as clean energy. This is untrue. Carbon dioxide emissions of power plants that burn forest biomass with pollution control systems turned on have an impact on global warming three times greater than a coal powered plant, and they create 304 percent more carbon dioxide than natural gas power plants. Nitrogen oxide

emissions and particulates in recent medical literature have been found to have significant health effects. Burning wood is dirtier than burning coal or natural gas. Defer action on this bill as it's a bad investment of state funds and has negative effects on human health and the climate. Slash burning releases massive quantities of carbon dioxide in other parts of the world. A DNR study from November 2008 shows climate and human health impacts from the use of biomass for power production. The DNR itself has questions about this practice.

**Persons Testifying** (Technology, Energy & Communications): (In support) Peter Goldmark and Craig Partridge, Department of Natural Resources; and Bob Guenther, International Brotherhood of Electric Workers 77.

(In support with concerns) Stephen Bernath, Department of Ecology.

(With concerns) Tim Boyd, Vaagen Brothers, Boise Cascade, Boise Paper.

**Persons Testifying** (General Government Appropriations): (In support) Peter Goldmark, Commissioner of Public Lands.

(Opposed) Dr. Willam Simmons; and Duff Badgley, No Biomass Burn.

**Persons Signed In To Testify But Not Testifying** (Technology, Energy & Communications): None.

**Persons Signed In To Testify But Not Testifying** (General Government Appropriations): None.