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**Commerce & Labor Committee**

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**HB 3227**

**Brief Description:** Regulating rates of compensation for forest products harvesters or haulers.

**Sponsors:** Representative Conway.

**Brief Summary of Bill**

- Permits log harvesters and log haulers to form cooperative associations to participate in a negotiation process (that includes arbitration) with forest landowners over the rates of compensation that, if approved by the Department of Labor and Industries, apply to contracts for log harvesting or hauling.

**Hearing Date:** 2/1/06

**Staff:** Chris Cordes (786-7103).

**Background:**

Regulation of Transportation Rates

Until 1995, the Utilities and Transportation Commission (UTC) regulated certain rates related to transportation of goods on public highways, such as log hauling rates. The UTC ended its regulation in 1995 after the Congress enacted the Federal Aviation Administration Authorization Act of 1994 (P.L. 103-305). The Act included a provision preempting the states and their political subdivisions from enforcing any law related to price, route, or service when a carrier affiliated with an air carrier is transporting property by aircraft or motor vehicle.

Antitrust Laws

Under federal law and most states' laws, unreasonable restraints of trade by competitors are prohibited. These laws are generally referred to as antitrust laws. For example, the federal Sherman Antitrust Act prohibits agreements among competitors to fix prices, rig bids, or allocate customers, and prohibits monopolizing any part of interstate commerce with anti-competitive conduct. Similar anticompetitive activities are regulated in Washington under the Washington Consumer Protection Act and pursuant to Article 12, section 22 of the State Constitution, which prohibits an association of persons making a contract for the purpose of fixing the price of any product.

Certain state programs that would otherwise violate the federal antitrust laws are exempt from those laws. The U.S. Supreme Court has recognized this exemption, explaining that federal

antitrust laws were not intended by Congress to apply to conduct sanctioned by state governments.

The test the courts use to determine whether conduct is protected under the state action exemption requires that: (1) there be a clear and affirmative state policy, implicit or explicit in the law, to allow anticompetitive conduct; and (2) the state actively supervise the conduct by having authority, and also by using it, to approve or disapprove of particular conduct.

### **Summary of Bill:**

Log harvesters and haulers are authorized to form cooperative associations to meet, confer, and share information, and take other supporting collective action, to establish compensation rates for log harvesting and log hauling services. Resulting rate determinations are submitted to the Department of Labor and Industries (Department) for approval. The Department must give notice to those requesting such notice, and these persons have 30 days to comment on the rate submission. The Department must reject any rate submission that was not conducted or arbitrated in an arm's length process. Once approved, a rate is in effect in the relevant labor market for one calendar year.

Rates, accompanied by specified information, are submitted to the Department in one of two ways:

- The cooperative association meets and negotiates with forest landowners to determine reasonable rates, and the negotiations results are mutually proposed to the Department.
- If the negotiations between the cooperative association and the forest landowners are not successful, either party may demand binding arbitration. The arbitrator must award one of parties' proposals, and that award is forwarded to the Department.

In approving rates for any given forest landowner, the Department must consider:

- the harvester's or hauler's costs, including wages, overhead, fuel, insurance, pensions, and the cost of replacing equipment;
- environmental and highway laws;
- the impact of the award on the competitive position of the landowner in the market area or competing market areas;
- a fair return on investment for all parties;
- the species of tree, type of machinery, typography of harvesting sites, and method of harvesting involved;
- the amount of hauling on private or public roads, including travel time and road conditions; and
- safety considerations.

"Forest landowner" is defined as a government or a person or business organization registered with the state of Washington that owns directly, or through affiliated persons, or possesses economic control over, more than 100,000 acres in a labor market area. Two labor market areas are defined as the counties in specified forest excise tax hauling areas determined by the Department of Revenue: One labor market area includes hauling areas 1 through 5 and 10 (generally, western Washington); and the other labor market area includes hauling areas 6 and 7 (generally, counties in eastern Washington).

A forest landowner violates these provisions if the landowner pays rates for harvesting or hauling services that are other than the approved rates, if any, or discriminates against a person that initiates or participates in a rate determination proceeding. However, these provisions do not prohibit a contract between a landowner and an individual harvester or hauler that pays rates other than Department-approved rates if no Department-approved rates apply to the service or to the area.

It is stated that these provisions are intended to displace existing market forces based on a legislative finding that such forces are insufficient to permit the affected market to function normally. Activities under these provisions do not constitute illegal restraint of trade, as long as the activities are for the purpose of participating in a rate determination proceeding. A contract entered into under negotiations between a forest landowner and a cooperative group of harvesters or haulers is not illegal restraint of trade if the resulting price is approved by the Department.

**Rulemaking Authority:** The bill does not contain provisions addressing the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2006.

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