

HOUSE BILL REPORT

HB 2247

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to forestry resources and rural development, establishing a compensation system for haulers of logs.

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

Sponsors: Representatives Conway, Blake, Takko, Hurst and Simpson.

Brief History:

Committee Activity:

Commerce & Labor: 2/20/07, 2/27/07 [DP].

Brief Summary of Bill

- Establishes a process by which the Department of Labor and Industries sets intrastate compensation rates for log haulers.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Crouse.

Staff: Jill Reinmuth (786-7134).

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 (Act) of 1994 (P.L. 103-305). This Act included a provision preempting

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the states and their political subdivisions from enacting or enforcing any law related to price, route, or service of any motor carrier. See 49 U.S.C. § 14501.

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.

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:

The Department of Labor and Industries (Department) will establish intrastate compensation rates for log haulers when petitioned to do so by either landowners or qualified cooperative associations or labor unions.

Requests for compensation rates, accompanied by specified information, may be submitted to the Department in one of two ways:

- Joint petitions may be submitted by corporate forest landowners and cooperative associations who meet and agree on a common compensation rate request.
- Individual petitions may be submitted by forest landowners or cooperative associations.

State agency commercial forest landowners may use compensation rates that are the average of joint petitions for the past 12 months or may file their own joint petitions with hauling cooperatives.

When the Department receives a compensation rate petition, the Department must give notice to those requesting such notice, and these persons have 30 days to comment on the submission. The Department must reject any submission that was not conducted or arbitrated in an arm's length process.

In approving compensation rates for any given commercial forest landowner, the Department must consider the following criteria:

- prevailing wage rates for log truck drivers and similar types of hauling in the same labor market area;
- the log hauler's costs, including overhead, fuel, health insurance, other insurance, pensions, or other retirement costs;
- environmental and highway laws;
- the impact of the award on the competitive position of the landowner in the labor market area or competing market areas;
- the amount of hauling on private or public roads, including travel time and road conditions;
- the cost to comply with safety regulations; and
- the number of hours normally worked daily and weekly, and any limits on those hours.

The Department must adopt the compensation rate submitted by a petitioner which best reflects these criteria. If none of the compensation rates submitted by petitioners are in the best interest of the state, the Department may set a different compensation rate based on these criteria. The Department must approve a petition only upon finding that the compensation rates are adequate to assure the vehicle driver a living wage without compromising the safe maintenance and operation of the vehicle on public highways. Once approved, a compensation rate is in effect for the corporate landowner for one calendar year.

A forest landowner violates these provisions if the landowner pays rates for hauling services that are below the rates established by the Department, or discriminates against a person or organization that initiates or participates in a compensation rate determination proceeding. However, these provisions do not prohibit a contract between a landowner and an individual hauler that pays rates higher than Department-approved rates if no 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 to ensure the safety and stability of this industry and the safety of the general public. Activities under these provisions do not constitute illegal restraint of trade, as long as the activities are for the purpose of participating in a compensation rate determination proceeding. A contract entered into under negotiations between a forest landowner and a cooperative group of forest products haulers is not illegal restraint of trade if the resulting compensation rate is approved by the Department.

A violation of these practices is a violation of the Consumer Protection Act (CPA). Under the CPA, a court may impose civil penalties on a perpetrator in the amount of \$2,000 for a general violation and/or may order an injunction, the payment of court costs and attorney fees, an injunction, or other necessary remedies.

"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 of forest land 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 one through five and 10 (generally, western Washington); and the other labor market area includes hauling areas six and seven (generally, counties in eastern Washington).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There are 525 members in the Northwest Log Truckers' Co-op that represent more than 700 trucks. Since last year's meeting, the co-op has met with representatives from the Governor's Office and several timber companies. Most timber companies that we met with understood the issues and were concerned, except one. The meetings with that company deteriorated quickly. It was basically "take it or leave it."

The rates are very low and make it difficult to compete in the labor market and to provide benefits. In the dump truck industry, the rate is \$104 per hour. In our industry, the rate in southwest Washington is between \$50 and \$52 per hour. The rate in northwest Washington is around \$75 per hour.

We haul logs without knowing exactly what we'll get paid. Our costs have gone up, but our rates haven't kept pace. Fuel used to be a sixth of our costs; it is now a third. Tires and parts have also increased substantially.

The key issue is safety. But without sufficient revenue, we cannot have safety. To survive, drivers are driving more hours than allowed, driving faster, and carrying heavier loads.

We need some bargaining power so that we can negotiate higher rates. Some timber companies permit the formation of cooperatives to negotiate rates and other issues. Other companies do not.

The antitrust issues can be addressed. If there is state action and active supervision, rate setting is permissible.

(Opposed) The Washington Forest Protection Association (Association) agrees that the safety of log haulers and the public is key. The Association cannot negotiate on behalf of its members because of antitrust issues. We encourage member companies to keep the lines of communication open.

There are 21 million acres of timber land in Washington. About 18.3 million acres are commercial timber lands. Of that, 7 million acres are privately owned. Many timber land owners own less than 100,000 acres. There are about 178 mills in Washington.

This bill could result in unintended consequences. It works at cross-purposes with other public policies. It is anti-competitive and impacts the third largest segment of Washington's economy.

This bill raises a number of legal issues. The antitrust issue has already been mentioned. The more important issue is the preemption issue. The Washington Utilities and Transportation Commission used to regulate rates. Then Congress enacted a law that preempted the state's rate-setting authority. There are issues to be resolved, but this bill and others in the field of rate-setting would be preempted.

The root issue is the limited timber supply. Until that issue is addressed, our ability to better compensate log haulers and others is limited.

Our company's free market solution has been in place since 1995 and has worked pretty well.

The fiscal note shows that workers' compensation funds would be used to administer the rate-setting program. What is the connection between workers' compensation and rate setting?

Persons Testifying: (In support) Brian Gallagher, Jim Nielson, Sherrie Bond, Tracey Lutton, and Lon Michaels, Northwest Log Truckers' Co-op; and Scott Jerles, S&L Jerles Trucking.

(Opposed) Debora Munguia, Washington Forest Protection Association; Tom Boeder, Perkins Coie; Patti Case, Green Diamond Resource Company; Kris Tefft, Association of Washington Business; and Bob Dick, American Forest Resource Council.

Persons Signed In To Testify But Not Testifying: Wesley Newbury, Rick Smith, Bruce Thompson, Gary Barnes, and Roger Nixon, Northwest Log Truckers' Co-op.