
SUBSTITUTE HOUSE BILL 3227

State of Washington **59th Legislature** **2006 Regular Session**

By House Committee on Commerce & Labor (originally sponsored by Representative Conway)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to forestry resources and rural development,
2 establishing a system of collective bargaining for loggers and haulers
3 of logs; and adding a new chapter to Title 19 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Washington's agricultural forest products industry is a vital
7 component of Washington's economy and has a direct relationship to the
8 economic health and welfare of workers, rural communities, and
9 businesses.

10 (2) Central to the viability of the forest products industry is a
11 stable work force of loggers and log haulers available to harvest and
12 transport wood from Washington's forests. This stability is
13 endangered, threatening the viability of rural communities and the
14 employment of those in the forests products sector.

15 (3) Based on patterns and configurations of forest landownership,
16 the harvesting and hauling of forest products are performed by numerous
17 loggers and truckers who, in many cases, despite being labeled
18 "independent contractors" are economically dependent and thus

1 effectively employees of forest landowners. The compensation and
2 bargaining position of those individuals are adversely affected unless
3 they are able to join together voluntarily in cooperative associations.

4 (4) An imbalance of market power exists when one forest landowner
5 owns, possesses, or acquires economic control over more than one
6 hundred thousand acres of forest in a labor market area.

7 (5) The inequity of power in determining compensation and the lack
8 of opportunity to join together in bargaining over compensation results
9 in unfair contract rates for the services of loggers and log haulers.
10 This imbalance prevents the labor market from operating in a manner
11 suitable for the public interest of Washington citizens.

12 (6) Membership in such an association is meaningful only if a
13 landowner contracting for harvesting and hauling of forest products is
14 required to bargain in good faith with the association as the
15 representative of its members.

16 (7) It is in the public interest to ensure a reasonable rate of
17 compensation for log harvesting and log hauling services and enacts
18 this chapter to create a process whereby a system of rate setting
19 through collective bargaining is established between large commercial
20 landowners and log harvesters and log haulers.

21 NEW SECTION. **Sec. 2.** The definitions in this section apply
22 throughout this chapter unless the context clearly requires otherwise.

23 (1) "Cooperative association" includes a cooperative membership-
24 based entity whose purpose is to promote the interests of those engaged
25 in the agricultural activities of harvesting and hauling of logs
26 through rate setting and is registered as such with the state of
27 Washington and represents at least fifty harvesters or haulers or any
28 combination thereof in a labor market area.

29 (2) "Economic control" means the legal right, whether through
30 ownership, contract, or otherwise to make or influence decisions
31 regarding the harvest of trees and disposition in general of logs on
32 subject land.

33 (3) "Forest land" means agricultural forest land used primarily for
34 the growth of trees to be harvested for commercial use.

35 (4) "Forest landowner" means:

36 (a) A person, corporation, limited partnership, government,
37 municipality, or any form of business organization registered with the

1 state of Washington that owns directly, or through affiliated persons,
2 or possesses economic control over, more than one hundred thousand
3 acres in a labor market area; or

4 (b) An agent or subsidiary of a person described in (a) of this
5 subsection if that agent or subsidiary is involved in contracting or
6 negotiating contracts or other arrangements, written or oral, with
7 forest products harvesters or forest products haulers.

8 (5) "Forest products harvester or hauler" means a person having a
9 place of business in this state who is engaged in the agricultural
10 activity of harvesting trees or hauling harvested trees from forest
11 land in the state under a contract or subcontract, directly or
12 indirectly, for a forest landowner.

13 (6) "Labor market area" means those counties in one of two forest
14 excise tax hauling areas set forth by the Washington state department
15 of revenue for the purposes of applying the forest excise tax as
16 follows:

17 (a) Those counties located in hauling areas 1, 2, 3, 4, 5, and 10
18 are in one labor market; and

19 (b) Those counties located in hauling areas 6 and 7 are in a second
20 labor market area.

21 NEW SECTION. **Sec. 3.** (1) To establish rates of compensation for
22 log harvesting and log hauling services, harvesters and haulers may
23 join together and form cooperative associations to meet, confer, share
24 information, and take other collective action as may be intended to
25 support their participation in the processes contemplated by this
26 chapter leading to the approval of rates by the utilities and
27 transportation commission.

28 (2) In approving rates with respect to any given forest landowner,
29 the utilities and transportation commission must consider the following
30 criteria. Rates need not be unitary and may take into account
31 variations in these criteria with respect to different portions of the
32 subject land or operations thereon:

33 (a) The harvester's or hauler's costs, including, but not limited
34 to, wages, overhead, fuel, insurance including health insurance,
35 pensions or other retirement costs, and the cost of replacing
36 equipment;

37 (b) Environmental and highway laws or rules;

1 (c) The impact of the award on the competitive position of the
2 landowner in the market area or competing market areas;

3 (d) A fair return on investment for all parties;

4 (e) The species of tree, type of machinery, typography of the site
5 to be harvested, and method of tree harvesting involved;

6 (f) The amount of hauling conducted on private roads and the amount
7 of hauling conducted on public roads including travel time from the
8 hauling site to the delivery site and the conditions of the road; and

9 (g) Safety considerations.

10 (3) Rates may be submitted to the utilities and transportation
11 commission for review and approval in one of the two following ways:

12 (a) Cooperative associations may meet and negotiate with forest
13 landowners in order to determine reasonable rates to be paid for
14 harvesting or hauling services in the state of Washington. If these
15 negotiations are successful, the rates may be mutually proposed to the
16 utilities and transportation commission; or

17 (b) If the negotiations under (a) of this subsection are
18 unsuccessful, either party can demand binding arbitration. The
19 arbitrator must use the criteria set out in subsection (2) of this
20 section. The arbitrator must award one of the two proposals offered by
21 the parties, and that award will be forwarded to the utilities and
22 transportation commission.

23 (4) All submissions to the utilities and transportation commission
24 for the review and approval of rates shall be accompanied by the
25 following information:

26 (a) The identity of the forest landowner who owns or possesses
27 economic control over the land on which the rates are to apply and the
28 geographic area in which the rates are to apply;

29 (b) The rates as negotiated or arbitrated;

30 (c) A summary of relevant negotiations; and

31 (d) Other information relevant to the factors needed for the
32 utilities and transportation commission to make its decision, and as
33 otherwise requested by the commission.

34 (5) When the utilities and transportation commission receives the
35 submission of a negotiated or arbitrated rate, it must notify all
36 persons who have requested to be notified of submissions. These
37 persons have thirty days to comment on the submission, and the

1 commission must review these comments in approving rates. The
2 commission must reject any submission that resulted from a negotiation
3 or arbitration that was not conducted at arm's length.

4 (6) Once rates have been approved by the state of Washington they
5 remain in effect for that labor market area for one calendar year.

6 NEW SECTION. **Sec. 4.** A forest landowner violates this chapter if
7 that forest landowner:

8 (1) Pays rates for harvesting or hauling services in the state
9 other than the utilities and transportation commission's approved
10 rates, if any, for that service in that harvesting and hauling area; or

11 (2) Discriminates against any person for initiating or
12 participating in a rate determination proceeding under this chapter.

13 NEW SECTION. **Sec. 5.** This chapter does not prohibit the
14 negotiation and execution of a contract between a forest landowner and
15 an individual harvester or hauler that provides for the payment of
16 compensation rates other than those determined under this chapter, as
17 long as no utilities and transportation commission's approved rates
18 applicable to the service or area being provided exist.

19 NEW SECTION. **Sec. 6.** This chapter is intended to displace
20 existing market forces based on a legislative finding that such forces
21 are insufficient to permit the affected market to function normally.
22 Activities carried out under this chapter do not constitute a
23 conspiracy, or a combination in restraint of trade or an illegal
24 monopoly, nor are they carried out for the purposes of lessening
25 competition or fixing prices arbitrarily, as long as the activities are
26 carried out for the purpose of preparing, initiating, or participating
27 in a rate determination process under this chapter. A contract or
28 agreement entered into under negotiations between a forest landowner
29 and a cooperative group of harvesters or haulers is not an unlawful
30 restraint in trade or part of a conspiracy or combination to accomplish
31 an improper or illegal purpose or act, as long as the resulting price
32 is approved by the utilities and transportation commission.

33 NEW SECTION. **Sec. 7.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
5 a new chapter in Title 19 RCW.

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