

# HOUSE BILL REPORT

## SHB 1909

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### As Passed Legislature

**Title:** An act relating to specialized forest products.

**Brief Description:** Protecting from the theft of specialized forest products.

**Sponsors:** By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Orcutt, B. Sullivan, Roach, Blake, Takko, Pearson, Kristiansen and Hinkle).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/13/07, 2/26/07 [DPS].

**Floor Activity:**

Passed House: 3/14/07, 96-0.

Senate Amended.

Passed Senate: 4/5/07, 45-1.

House Refused to Concur.

Senate Insists on Position.

House Insists on Position.

Senate Amended.

Passed Senate: 4/19/07, 46-0.

House Concurred.

Passed House: 4/20/07, 98-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Creates an affirmative defense to the law on specialized forest products.
- Creates the Specialized Forest Products Task Force.
- Prohibits the use of a rake in the harvest of huckleberries.
- Requires the Department of Natural Resources to review and make recommendation on the state's huckleberry resource.

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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.*

## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, Lantz, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

**Staff:** Jason Callahan (786-7117).

### **Background:**

#### Specialized Forest Products

A specialized forest product (SFP) is, generally, an item found in the forest with a value other than that found with traditional timber. The term SFP is defined to include native shrubs, cedar products, cedar salvage, processed cedar products, speciality wood, edible mushrooms, and certain barks. Many of these terms are further defined, to include items such as certain logs or slabs of cedar, spruce, maple, and alder, along with cedar shakes and fence posts.

A SFP permit, or a true copy of the permit, is required in order to possess or transport the following:

- a cedar product or cedar salvage;
- specialty wood;
- more than five Christmas trees or native ornamental trees or shrubs;
- more than five pounds of picked foliage or Cascara bark, and
- more than five gallons of a single mushroom species.

The SFP permit must be obtained prior to harvesting or collecting the products, even from one's own land, and is available only from county sheriffs, on forms provided by the Department of Natural Resources (DNR). The permit be validated by a sheriff.

For cedar and speciality wood, a processor must keep records for one year of the purchase, and have a bill of lading available to accompany all cedar or speciality wood products.

Violations of the law on SFPs is punishable as a gross misdemeanor, and a convicted individual may face a fine up to \$1,000 and/or up to one year in a county jail. In addition, a law enforcement officer with probable cause may seize and take possession of any SFPs found, and if the product seized was cedar or speciality wood, may also seize any equipment, vehicles, tool, or paperwork.

#### Affirmative Defenses

In a criminal prosecution, often times an affirmative defense is available to the defendant. An affirmative defense is a defense to the charges that the defendant has the responsibility to prove. This can be contrasted with the elements of the crime, which the prosecution has the burden to prove.

A fully proven affirmative defense can lead to the avoidance of a guilty verdict, even if the prosecution has proven all elements of the crime beyond a reasonable doubt.

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**Summary of Substitute Bill:**

Affirmative Defense

An affirmative defense is available to a person being prosecuted under the SFP laws that the SFPs in question were harvested from the defendant's own land or that the SFPs in question were harvested with the permission of the landowner. The burden of proving the defense rests with the defendant, who must establish the defense by a preponderance of the evidence.

Specialized Forest Products Work Group

The SFP Work Group (Work Group) is established to be staffed by the Department of Natural Resources and to consist of representation from the Department of Natural Resources, county sheriffs, prosecutors, forest landowners, tribes, wood carvers, cedar processors, and other participants invited by the Commissioner of Public Lands.

The Work Group must review the SFP statutes and current law dealing with theft, and make recommendations relating to SFP regulations. The recommendations must provide tools for law enforcement, protection for landowners, not be overly burdensome, are clear, and are administered consistently statewide.

A report from the Work Group, along with draft legislation, is due by December 1, 2007.

Huckleberries

The use of a rake or other mechanical device for the harvest of huckleberries is prohibited.

The DNR is required to review the uses of the state's huckleberry resources. The review must include an analysis of the demand, whether current use levels are sustainable, and whether the various uses of the resource are compatible. Based on the review, the DNR must report findings and recommendations by the end of the year as to whether there should be a state permitting requirement for huckleberry harvest, whether huckleberries should be considered an SFP, and what conditions should be placed on huckleberry harvests.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) Citizens are being arrested and prosecuted for possessing small amounts of wood that they are lawfully entitled to own. Wood deemed unlawful often comes from home maintenance, wind storm clean up, and donors who have no other way to dispose of the wood. Current law requires a permit for any wood that can be made into a box, even if it is a very small box. Permits are often difficult and inconvenient to obtain. It should not be illegal for innocent people to possess wood.

Valuable wood is being confiscated, and law enforcement uses the threat of confiscation of vehicles and equipment to coerce compliance with their requests.

Wood carving and wood turning are cultural traditions in the Northwest. The participants are also taxpayers and business owners. The current law puts these practices into jeopardy. The current law imposes unreasonable burdens on the casual movement of wood. In retail products, there is an assumption that a sweater or stereo is not stolen until it is proven that it has been. The same should be true for specialized forest products.

(With concerns) Unintended consequences have occurred, but 40 years of progress should not be thrown away. There should be a comprehensive review by all involved and affected by the specialized forest products law.

(Opposed) This bill simply makes the theft of specialized forest products easier by creating the opportunity for the scofflaw to play shell games where criminal activity is hidden behind fraudulent documents. Law enforcement would never know for sure if documents presented were legitimate, and the bill would make the law on specialized forest products impossible to enforce.

**Persons Testifying:** (In support) Representative Orcutt, prime sponsor; Donna Quezada, Creative Wood Sculptures and WashingtonWoodLaws.org; Bob Sweazy, Evergreen Woodworkers Guild and South Puget Sound Wood Turners; Lawrence Bonn, Evergreen Woodworkers Guild; and John Merchant, American Association of Wood Turners.

(With concerns) Howard Thronson, Department of Natural Resources; Debora Munguia, Washington Forest Protection Association; and Kristen Sawin, Weyerhaeuser Company.

(Opposed) Mike Whelan and Matt Stowers, Grays Harbor County Sheriff's Office.

**Persons Signed In To Testify But Not Testifying:** None.