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## Commerce & Labor Committee

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### HB 2247

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

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

Brief Summary of Bill
<ul style="list-style-type: none"><li>Establishes a process by which the Department of Labor and Industries sets intrastate compensation rates for log haulers.</li></ul>



**Hearing Date:** 2/20/07

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

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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; and
- 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 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).

**Rules Authority:** The bill does not address the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Requested on February 14, 2007.

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