

HOUSE BILL REPORT

SHB 1038

As Passed House:

March 6, 2009

Title: An act relating to forest products addressed by chapter 76.48 RCW.

Brief Description: Regarding specialized forest products.

Sponsors: House Committee on General Government Appropriations (originally sponsored by Representatives Orcutt, Blake, Kretz, Van De Wege, Warnick, McCune, Pearson, Kristiansen and Kessler).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/3/09, 2/10/09 [DPA];
General Government Appropriations: 2/26/09 [DPS(APPG)].

Floor Activity

Passed House: 3/6/09, 97-0.

Brief Summary of Substitute Bill (As Amended by House)

- Implements the recommendations of the Specialized Forest Practices Work Group, including the creation of a dual permitting system and a change in the scope of products that require a permit under the specialized forest products permitting system.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 12 members: Representatives Blake, Chair; Jacks, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Liias, McCoy, Nelson, Ormsby, Pearson, Van De Wege and Warnick.

Staff: Jason Callahan (786-7117)

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

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.

Majority Report: The substitute bill by Committee on General Government Appropriations be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Owen Rowe (786-7391)

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 includes native shrubs, cedar products, cedar salvage, processed cedar products, specialty 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 sell wild huckleberries or 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 and validated by a sheriff 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). For cedar and specialty wood, a processor must keep records for one year of any purchase and have a bill of lading available to accompany all cedar or specialty wood products.

Violations of the law on SFPs is punishable as a gross misdemeanor. Violators 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. If the product seized was cedar or specialty wood, the officer may also seize any equipment, vehicles, tools, or paperwork.

An affirmative defense is available to a person being prosecuted under the SFP laws if the SFPs in question were harvested from the defendant's own land or were harvested with the permission of the landowner. The burden of proof 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) was established in 2007 to be staffed by the DNR and to consist of representation from the DNR, county sheriffs, prosecutors, forest landowners, tribes, wood carvers, cedar processors, and other participants invited by the Commissioner of Public Lands. The Work Group was directed to review the SFP statutes and current law

dealing with theft, and to make recommendations relating to SFP regulations. The recommendations were to provide tools for law enforcement and protection for landowners. They had to be clear and not overly burdensome and had to be administered consistently statewide.

A report from the Work Group, along with recommended legislation, was submitted to the Legislature in December of 2008.

Summary of Substitute Bill:

The chapter of law governing SFPs is substantially reorganized, streamlined, and modernized without changing the original policy of the underlying law. In addition, a number of policy changes are made to reflect the recommendations of the Work Group. In addition to the statutory changes, the DNR and other public entities are directed to administer the elements of the report that do not require statutory authority.

SFP Definitions.

The scope of what items are considered to be SFPs, and thus subject to permitting, is altered. The permitting threshold for cut or picked evergreen foliage is increased from five pounds to 20 pounds. Below this level, an SFP permit is not required. Scotch broom, along with all noxious weeds, is removed from the list of species that qualify as an SFP.

In addition, the definition of specialty wood is changed to red cedar, Englemann spruce, Sitka spruce, and big leaf maple wood that is capable of being cut into a knot-free segment 19 inches long and 7.5 inches wide, with a set minimum thickness. Wood from an alder tree, matching the same dimensions, is also included in the definition of specialty wood.

The definition of cedar products, which a product must meet in order to trigger permitting requirements, is narrowed to include shakes and bolts, fence posts and rails, logs, and pieces measuring 15 inches or longer. Artistic cedar products and processed cedar products are expressly excluded from the definition.

Common names are provided for the species of huckleberries which must be sold under a permit. Clarification is provided that domestic mushrooms do not qualify as an SFP.

Dual Permitting.

A dual permitting system for SFPs is created. Most individuals required to obtain an SFP permit have the choice between obtaining a validated permit or a verifiable permit. A validated permit must be validated by a sheriff's office prior to the harvest or transport of an SFP. A verifiable permit must be obtained before harvest or transport, but does not have to be presented to a law enforcement agency until five days after the harvest or transport of the SFPs. At that time, the verifiable permit must be hand delivered or mailed to the appropriate sheriff's office. Forms for both permit types are to be provided by the DNR. The landowner granting permission to harvest on his or her lands may require the permittee to use only one of the permitting options. However, huckleberry sales can only be conducted with a validated permit.

The forms for validated and verifiable permits require similar information. This information includes the type of SFP to be harvested, the contact information for the harvester and the landowner, a description of landmarks near the harvest site, and the approximate amount of SFPs to be harvested.

In addition, certain information is only required of a verifiable permit, and other information is only required for a validated permit. For instance, validated permit forms must include the parcel number or legal description of the property from where the SFPs will be harvested. Verifiable permit forms must include either the parcel number or the street address, depending on whether the landowner lives there and whether the harvest site is less than one acre. Verifiable permit forms must also include evidence of ownership from the county assessor and a unique state identification number for both the harvester and the landowner. Validated permits must include a copy of a valid photo identification.

Buyer Responsibilities.

The responsibilities of those who purchase SFPs are unified for all the different commodities that are included in the definition of SFP. A distinction is also made between the first buyer of an SFP and all subsequent buyers.

The first SFP buyer is required to record the number of the SFP permit presented by the seller. All SFP buyers are required to record whether the product was accompanied by a bill of lading or other documentation, the type and amount of SFP purchased, the name of the seller, the date of delivery, the name of the person driving the vehicle delivering the SFP, and the license plate number of the vehicle.

All SFP buyers are required to show a master business license at their place of business. This replaces a requirement that buyers display a tax document no longer available to SFP buyers.

Exemptions.

The current exemptions to SFP permitting requirements are expanded. Additional exemptions include specialty wood and evergreen foliage harvested under a valid DNR Forest Practices Application (FPA), harvest and transport of an SFP by a governmental entity or its agent to maintain a right-of-way, and the work of a utility for maintaining its right-of-way.

Individuals using the exemption for harvest conducted concurrently with a valid FPA are required to provide the FPA number in place of an SFP permit in further transactions. Buyers of these products must record the FPA number in lieu of the SFP permit number.

The SFPs imported from out-of-state are not subject to permitting requirements as long as the person with the product has a bill of lading or government-issued documentation from a Canadian province or another state indicating the SFP's origin.

Enforcement-related Provisions.

The provisions relating to when and how law enforcement can take SFPs into custody is streamlined and clarified. Custody of SFPs and related items can be initiated by law enforcement during an investigation with probable cause that a violation of the SFP permitting laws occurred. If no arrest is made, the detained materials are to be returned.

If an arrest follows the investigation, SFPs and related items may be seized and held during trial. Perishable products may be sold by law enforcement, with the proceeds maintained until after the outcome of the trial.

A new class C felony is created for an individual showing forged documents when selling SFPs. In addition, a presiding court may order a suspension of a person's privilege to obtain an SFP permit after the third conviction of an SFP-related offense.

Outreach and Education Account.

The SFP Outreach and Education Account (Account) is created. Monies in the Account can be used by the DNR to develop educational material and outreach to minority groups. As part of educational outreach, the DNR is encouraged to enter into partnerships with both public and private third parties.

The Account receives one-third of any money collected from fines issued for SFP violations or from the final proceeds of any sales of SFP-related products that are confiscated. This money is redirected from the general fund of the county in which the case was prosecuted.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) Many individuals are affected by the SFP regulations, and the current SFP permitting system can result in innocent actors being criminally prosecuted. In one instance, possession of a \$30 piece of wood led to a criminal conviction and \$21,000 in legal bills. Clubs and social groups are constrained from offering high-quality wood for turning, and woodturning demonstrations are all but impossible to do legally. The SFP permits are difficult to obtain and in some counties are not available at all.

The goal of the Work Group was to develop a system of regulation that offers more consistent treatment of harvesters while maintaining law enforcement's tools. The Work Group was comprised of a very diverse group of citizens who invested untold hours in developing the new system. The solutions in the bill are not perfect for everyone, but perfection was never the goal. Instead, the collaborative and compromising process resulted in a process that addresses almost every issue in a workable fashion.

The solutions devised by the Work Group safeguards the victims of theft and the owners of industrial forestland, provides workable tools for law enforcement, and gives prosecutors statutory clarity on which to base cases. People who obtain an SFP permit will enjoy the verifiable permit option, which saves the permittee time and money in having to travel back and forth from sheriff's offices.

Only one county has a law enforcement officer dedicated exclusively to enforcement on forest lands. Other officers need to have clear and concise policies and statutes to enforce since they do not have the resources to become experts. This bill allows law enforcement officers to easily understand what is required of those who operate in the woods.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) The purpose of the bill is to prevent honest people from being convicted wrongly, but to do it in such a way that we can still prosecute those stealing wood. This bill takes away the requirement to get a pre-validated permit, and allows it to be easier for people trying to make a living from forest products to prove that they own collected materials lawfully. Often, the wood is being stolen from riparian areas where it should be left to protect fish and wildlife habitat. This bill is the product of a work group and is a consensus document that works well for everyone. The money in this bill is for the purpose of education so that people will understand the law and can comply. The specialized forest products industry is a \$100 million annual industry, a significant portion of trade in forest products is being conducted in the black market. The felony charge is intended to be a deterrent to those who are intentionally falsifying documents to get away with theft.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): Representative Orcutt, prime sponsor; Larry Miller, Woodturners and Hobbyists of Washington; Donna Quezada, Creative Wood Sculptures; Matt Stowers, Washington Sheriff's Association; Craig Partridge, Department of Natural Resources; Peter Goldmark, Commissioner of Public Lands; and Patti Case, Green Diamond Resource Company.

Persons Testifying (General Government Appropriations): Representative Orcutt, prime sponsor; and Heath Packard, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): Dan Fazio, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.