

SENATE BILL REPORT

2SHB 2481

As of February 27, 2010

Title: An act relating to the department of natural resources authority to enter into forest biomass supply agreements.

Brief Description: Authorizing the department of natural resources to enter into forest biomass supply agreements.

Sponsors: House Committee on General Government Appropriations (originally sponsored by Representatives Van De Wege, Kretz, Blake, Hinkle, Ormsby, Dunshee, McCoy, Eddy, Upthegrove, Carlyle, Haler, Morrell, Warnick and Kessler; by request of Commissioner of Public Lands).

Brief History: Passed House: 2/13/10, 92-0.

Committee Activity: Natural Resources, Ocean & Recreation: 2/22/10, 2/25/10 [DPA-WM, w/oRec].

Ways & Means: 2/27/10.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Jacobsen, Chair; Ranker, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Hatfield and Swecker.

Minority Report: That it be referred without recommendation.

Signed by Senator Stevens.

Staff: Sherry McNamara (786-7402)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: The Department of Natural Resources (DNR) manages 5.6 million acres of forest, range, agricultural, aquatic, and commercial lands for the people of Washington. Approximately three million acres is state trust land that provides revenue to help pay for construction of public schools, universities, and other state institutions, and funds services in many counties.

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.

The Legislature has authorized DNR to sell valuable resources from state lands. DNR may sell a variety of resources from state lands, including timber, stone, gravel, and geoducks.

Last session, the Legislature authorized DNR to develop and implement two forest biomass energy demonstration projects, one east and one west of the Cascade mountains. DNR is required to provide a progress report to the Legislature by December 2010. Forest biomass is defined to include harvest residues such as tops, limbs, and thinning material, and mill products such as bark, sawdust, and limb ends from the wood processing industry.

Summary of Bill (Recommended Amendments): List and Inventory. DNR is authorized to maintain a list of all potential sources of forest biomass on state lands for the purposes of making biomass available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy, biofuels, for use in a biorefinery, or any other similar use.

The inventory must contain an estimated amount of the forest biomass available in the area and a determination of the ecological and operation sustainability of volumetric limit established by the biomass agreement. Prior to entering a contract or lease agreement for biomass supply, DNR must complete an inventory of the available forest biomass in the area that will be subject to the agreement. The pilot demonstration projects are exempt from this requirement.

In order to utilize the list to limit or terminate any agreement, DNR must determine that the overall supply of biomass in a region or watershed has been reduced to a point that further exploration and collection of biomass may not be ecologically or operationally sustainable or might otherwise threaten long-term forest health.

Forest Biomass Contracts. DNR may enter into biomass supply contracts for a term of up to five years or upon the removal of the agreed upon volume of biomass and the completion of other conditions of the contract.

DNR may contract for the sale of biomass as a valuable material by:

- requiring a separate bid and select the highest bidder for the forest biomass separately from the sale of valuable materials;
- expressly include forest biomass as an element of the sale of the valuable materials to be sold in the sales contracts; or
- a combination of the above two options.

DNR may also enter into either:

- direct sales for biomass, without public auction, based upon procedures adopted by the Board of Natural Resources to ensure competitive market prices and accountability; or
- contracts for biomass at public auction or by sealed bid to the highest bidder.

DNR may enter into contract terms up to 15 years when an entity plans and commits to a capital investment of at least \$50 million before the contract and completes that investment prior to removal of biomass under the contract. DNR may include provisions in the contract that are periodically adjusted for market conditions. The contract is required to include

provisions that allow DNR, when it is in the best interest of the trust beneficiaries, to maintain access to existing users of biomass.

The biomass volume that is conveyed under this act will not be counted toward DNR's sustainable harvest targets, except that appraised timber sold in a conventional timber sale will count toward the target whether individual trees are used by that purchaser for timber or biomass energy.

DNR must specify in each contract an annual volumetric limit of the total cubic volume or tons of forest biomass to be supplied from a specific unit, geographically delineated area, or region within a watershed or watersheds on an ecologically and operationally sustainable basis. DNR must adopt general procedures for making the biomass supply availability determinations.

DNR may unilaterally amend the volume to be supplied by providing the contracting party with a minimum of six months notice prior to reducing the contract volume to be supplied if DNR determines the supply has been reduced to a point that it is no longer sustainable or may adversely affect long-term forest health.

DNR may renew the contract for up to three additional five-year periods if DNR finds:

- a sustainable supply of biomass is available for the term of the contract;
- the payment under the contract represents the fair market value at the time of the renewal; and
- the purchaser agrees to the estimated amount of biomass material available.

Forest Biomass Leases. DNR is authorized to lease state lands for the sale, exploration, collection, processing, storage, stockpiling, and conversion of biomass into energy or biofuels, if the department is able to obtain a fair market rental return to the state.

Leases may be entered into by public auction or negotiation, and may be for a term of up to 50 years. Leases that involve the development of a biomass processing, biofuel manufacturing, or biomass energy production facilities, DNR may include provisions for reduced rent until the facility is operational.

Evaluation and Report. DNR must evaluate how the supply agreements could be used to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional types of timber purchasers. DNR must report its findings to the Legislature by December 15, 2010. The evaluation must, at a minimum, identify how such supply agreement could:

- ensure DNR meets its fiduciary responsibility to the state's trust beneficiaries;
- restore or sustain a competitive market for state timber sales;
- generate returns for the trust that are commensurate with fluctuating market prices; and
- ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

DNR is required to conduct a survey of scientific literature regarding the carbon neutrality of forest biomass and report to the Legislature by December 15, 2010.

Forest Health Supply Agreement Demonstration Project. DNR may establish a five-year forest health and fuel reduction supply agreement demonstration project for the purposes of proving the concepts in the evaluation.

Definitions. The definition of valuable materials is modified to include forest biomass. The forest biomass definition is moved from RCW 43.30.020 to Chapter 79 RCW.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Recommended Amendments):

- Allows DNR to enter into contract terms up to 15 years when an entity plans and commits to a capital investment of at least \$50 million prior to the contract and completes that investment before removal of biomass under the contract;
- Allows DNR to include provisions in the agreement that are periodically adjusted for market conditions;
- Requires the contract to include provisions that allow DNR, when it is in the best interest of the trust beneficiaries, to maintain access to existing users of biomass;
- Ensures that biomass volume conveyed under this act will not be counted toward DNR's sustainable harvest target, except that appraised timber sold in a conventional timber sale will count toward the target whether individual trees are ultimately used by that purchaser for timber or biomass energy;
- Removes wood from old growth forests from the definition of what is not included in forest biomass; and
- Requires DNR to conduct a survey of scientific literature regarding the carbon neutrality of forest biomass and report to the Legislature by December 15, 2010.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (Natural Resources, Ocean & Recreation): PRO: This bill will provide long-term supply agreements for biomass that will improve forest health and put something to use that isn't being used. There is a need for stability in longer term agreements for energy production. We are in the learning stages; we created the pilot projects and this bill continues with a step in the right direction for building a biomass industry in our state. It is better to use biomass as fuel than burn it as slash. This bill will provide for clean air, when the biomass goes through combustion in a boiler it reduces the particulate matter by 99 percent. It will also provide for long-term stable green jobs, and provide revenue to the state where there was once a cost. This bill will help us continue to improve on the science related to the use of biomass. The forest health demonstration project is a great addition to the bill.

CON: Forest biomass is not clean. It pollutes more than coal. The green jobs created in this bill are not green. This bill is based on false assumptions that burning biomass is carbon neutral. Incineration of biomass will significantly increase carbon pollution exacerbating climate change and increase the particulate matter pollution. Teamsters (truckers) oppose biomass incineration.

OTHER: We are concerned with the definition of biomass excluding woods with preservatives. There are concerns with how these biomass supply agreements might affect traditional timber sales and the possibility of unintended consequences in future timber sales.

Persons Testifying (Natural Resources, Ocean & Recreation): PRO: Representative Van De Wege, prime sponsor; Craig Partridge, DNR; Doren Anderson, Northwest Energy Systems Co.; Roman Daniels-Brown, Western Wood Preservers Institute.

CON: William Sammons, EcoLaw; Duff Badgley, No Biomass Burn; Bob Guenther, IBEW 77.

OTHER: Tim Boyd, Vaagen Brothers, Boise Cascade and Boise Paper.

Staff Summary of Public Testimony on Recommended Amendments (Ways & Means):

PRO: In order for the biomass energy demonstration projects to be successful they need a long-term supply of forest biomass. The changes in the bill are agreed to and have addressed the concerns about how to sustainably harvest forest biomass without depleting or threatening forest health. We are requesting an amendment to exclude wood from existing old growth forests from the biomass definition. DNR's fiscal note does show some start-up costs with the revenue being indeterminate; this is because this is an emerging market that is being tested through the demonstration projects. DNR feels it can recoup the costs of running the program in the future. In addition, DNR has a federal grant of about \$1 million to conduct the biomass inventory and coordinate the implementation of this bill.

Persons Testifying (Ways & Means): PRO: Julie Suchanek, The Evergreen State College; Miguel Perez-Gibson, Washington Environmental Council; Heath Packard, DNR.