

HOUSE BILL REPORT

2SHB 2481

As Amended by the Senate

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:

Committee Activity:

Technology, Energy & Communications: 1/13/10, 1/20/10 [DPS];

General Government Appropriations: 2/2/10, 2/4/10 [DP2S(w/o sub TEC)].

Floor Activity:

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

Senate Amended.

Passed Senate: 3/3/10, 47-0.

Brief Summary of Second Substitute Bill

- Authorizes the Department of Natural Resources (DNR) to maintain a list of potential sources of forest biomass on state lands for the purposes of identifying and making forest biomass available for the conversion into energy, biofuels, or any other similar use.
- Permits the DNR to enter into contracts for the purpose of providing a supply of forest biomass from lands managed by the DNR.
- Authorizes the DNR to lease state lands for the conversion of biomass into energy or biofuels, for the development of a biorefinery, or for any other use derived from biomass.
- Authorizes the DNR to establish a five-year forest health and fuel reduction supply agreement demonstration project.

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 TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives McCoy, Chair; Finn, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Condotta, Eddy, Hasegawa, Hinkle, Hudgins, Jacks, Morris, Nealey, Takko, Taylor and Van De Wege.

Minority Report: Do not pass. Signed by 1 member: Representative McCune.

Staff: Scott Richards (786-7156).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; Armstrong, Assistant Ranking Minority Member; Blake, Crouse, Dunshee, Hudgins, Kenney, Klippert, Pedersen, Sells, Short, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative McCune, Ranking Minority Member.

Staff: Owen Rowe (786-7391).

Background:

State Trust Lands.

The Department of Natural Resources (DNR) supports income generation on the 3 million acres of state trust lands statewide. Of these, 2.1 million acres are forests and 1.2 million are agricultural, grazing, and range lands (420,000 acres of range are also counted as forest). The DNR provides oversight on state-owned trust lands in the areas of: timber sales; agriculture leasing; commercial real estate; rock, sand, and gravel; minerals and mining; oil and gas exploration; communication sites; rights of way; and specialized forest products.

Due to a mix of authorities, including state law, the state Constitution, and the state's federal Enabling Act, these lands are held by the state in trust for specified trust beneficiaries. In total, there are 18 trust beneficiaries that derive some level of economic benefit from the management of these trust lands. The beneficiaries include common schools, the state universities, community colleges, counties, and the state's Capital Budget.

Sale of Valuable Materials from State Forest Lands.

The DNR sells the majority of timber from state forest lands by putting tracts of timber up for bid. The DNR establishes an appraised value for the timber based on current market prices, and this value becomes the minimum bid for the timber sale. The successful bidder who is awarded the contract generally has three years to harvest the timber from the sale.

Under current law, the DNR has the authority to directly contract for the harvest of up to 20 percent of the total annual volume of timber offered for sale from state forest lands. All receipts from the gross proceeds of logs that are harvested under the contract harvesting program are deposited into the Contract Harvest Revolving Account (Account). The Board of Natural Resources has oversight of the Account. Monies in the Account in excess of \$5 million must be disbursed to the trust beneficiaries in accordance with existing procedures.

Forest Biomass Demonstration Projects.

In 2009 the Legislature authorized the DNR to develop and implement two forest biomass energy demonstration projects: one east of the crest of the Cascade mountains and one west of the crest of the Cascade mountains. The demonstration projects must be designed to:

- reveal the utility of Washington's public and private forest biomass feedstock;
- create green jobs and generate renewable energy;
- generate revenues or improve asset values for beneficiaries of state lands and state forest lands;
- improve forest health, reduce pollution, and restore ecological function; and
- avoid interfering with the current working area for forest biomass collection surrounding an existing fixed location biomass energy production site.

To develop and implement the forest biomass energy demonstration projects, the DNR is authorized to form forest biomass energy partnerships or cooperatives. The preferred model being public-private partnerships focused on convening the entities necessary to grow, harvest, process, transport, and utilize forest biomass to generate renewable energy.

Summary of Second Substitute Bill:

Contracting for Forest Biomass.

The DNR may enter into contracts for the purpose of providing a supply of forest biomass. The DNR may enter into forest biomass supply contracts for a term of up to five years or upon the removal of the agreed volume of biomass and the completion of other conditions of the contract.

Also, the DNR may enter into a contract for the sale of biomass energy as a valuable material. For forest biomass sales involving a contract for the sale of valuable materials, the DNR must comply with statutory provisions relating to the sale of valuable materials, and either: (1) require a separate bid and select the highest bidder for the forest biomass separately from the sale of valuable materials; (2) expressly include forest biomass as an element of the sale of the valuable materials to be sold in the sales contract; or (3) a combination of options one and two.

Additionally, the DNR may enter into either: (1) direct sales contracts for forest biomass, without public auction, based upon procedures adopted by the Board of Natural Resources (Board) to ensure competitive market prices and accountability; or (2) contracts for forest biomass at public auction or by sealed bid to the highest bidder. The Board may adopt sale procedures to allow the DNR to enter into sale contracts for forest biomass with or without a public auction.

In each contract type, the DNR must specify an annual volumetric limit 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.

The DNR is required to adopt general procedures for making the biomass supply availability determinations. The procedures must be written to ensure that biomass utilization is accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions. Additionally, the DNR must develop utilization standards and operational methods in recognition of the variability of on-site conditions.

The 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 the DNR determines that the available supply has been reduced to a point such that further removal of forest biomass may not be ecologically or operationally sustainable or may adversely affect long-term forest health.

At the expiration of the contract term, the DNR may renew the contract for up to three additional five-year periods, if the DNR finds: (1) an ecologically and operationally sustainable supply of forest biomass is available for the term of the contract; (2) the payment under the contract represents the fair market value at the time of the renewal; and (3) the purchaser agrees to the estimated amount of biomass material available.

Leasing of State Lands for Forest Biomass Energy Resources.

The DNR is authorized to lease state lands for the purpose of the supply of biomass energy, the development of a biorefinery, or for any other use derived from biomass. Leases may be entered into by public auction or by negotiation. Leases may be for a term of up to 50 years. For leases that involve the development of biomass processing, biofuel manufacturing, or biomass energy production facilities, the DNR may include provisions for reduced rent until the facility is operational. All forest biomass contractors and their operations, as well as all lessees and their operations, are required to comply with all applicable state and federal laws and regulations.

List of Potential Forest Biomass Energy Resources of State Lands.

The DNR is authorized to maintain a list of all potential sources of forest biomass on state lands for the purposes of identifying and making forest biomass available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy, biofuels, or any other similar use. The inventory must contain, at a minimum, an estimated amount of the forest biomass available in the area that will be subject to a forest biomass supply agreement and a determination of the ecological and operational sustainability of the volumetric limit established by a forest biomass agreement.

Before entering a contract or a state land lease agreement for forest biomass supply, the DNR must complete an inventory of the available forest biomass in the area that will be subject to agreements. Forest biomass demonstration projects are exempt from this inventory requirement.

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

Evaluation of Forest Biomass Supply Agreements and Reporting Requirements.

For the purpose of improving forest health on state trust lands, the DNR is directed to evaluate how forest biomass supply agreements could be utilized to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional types of timber purchasers. An additional purpose of this evaluation is to better clarify the relationship of forest biomass with the by-products of forest health and fuel reduction treatments that have been traditionally utilized for other products.

The evaluation must at a minimum identify how such supply agreements could: (1) ensure the DNR meets its fiduciary responsibility to the state's trust beneficiaries; (2) restore or sustain a competitive market for state timber sales; (3) generate returns for the trust that are commensurate with fluctuating market prices; and (4) ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

The DNR must report its evaluation findings to the Legislature by December 15, 2010.

Forest Health Supply Agreement Demonstration Project.

The DNR is authorized to establish a five-year forest health and fuel reduction supply agreement demonstration project for the purposes of showing how biomass supply agreements could be utilized to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional timber purchasers.

Definitions of Valuable Materials and Forest Biomass.

The definition of valuable materials under the Public Management Lands Act is amended to include forest biomass. "Forest biomass" is defined as the by-products of: current forest management activities; current forest protection treatments prescribed or permitted under the Forest Protection Act; or the by-products of forest health treatment prescribed or permitted under the Forest Insect and Disease Control Act. The definition of "forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; wood required to be left on-site under the Forest Practices Act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

EFFECT OF SENATE AMENDMENT(S):

Modifies the definition of biomass to exclude wood from existing old growth forests.

Allows the Department of Natural Resources (DNR) to enter into contract terms up to 15 years when an entity plans and commits to a qualifying 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.

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.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 12, relating to forest biomass harvesting resulting from forest health issues, which takes effect January 1, 2014.

Staff Summary of Public Testimony (Technology, Energy & Communications):

(In support) In developing forest biomass energy pilot projects in Washington and engaging with forest biomass energy stakeholders, the DNR determined that for potential projects to be successful, reliable supplies of forest biomass must be secured. This bill expands the DNR's ability to enter into contracts to extract forest biomass from DNR managed lands. This policy is a good opportunity to create and maintain forestry related jobs. This bill lays the foundation for potentially using national forest lands in a similar manner.

(In support with concerns) In establishing available supply limitations for forest biomass, the DNR should address concerns about how to sustainably harvest forest biomass without depleting forest and ecological health. It is not clear how increased truck traffic related to this new activity will degrade logging roads and how will the money be raised to maintain roads in response to increased traffic.

(With concerns) In contracting for these new biomass energy activities on DNR managed forest lands, the DNR needs to be aware of existing users of forest resources and how they may be hurt by the development on this new policy.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) This bill represents the second stage of the Department of Natural Resources' (DNR) biomass initiative. Last year, the DNR began four pilot projects to convert waste from forest operations into renewable energy products. This bill will allow the DNR to enter into long-term contracts to support the biomass industry. The proposed second substitute is a reflection of stakeholder work with industry representatives. The biomass industry is comfortable that the proposed second substitute bill will support the development of this industry.

(Opposed) The bill talks about biomass as clean energy. This is untrue. Carbon dioxide emissions of power plants that burn forest biomass with pollution control systems turned on have an impact on global warming three times greater than a coal powered plant, and they create 304 percent more carbon dioxide than natural gas power plants. Nitrogen oxide emissions and particulates in recent medical literature have been found to have significant health effects. Burning wood is dirtier than burning coal or natural gas. Defer action on this bill as it's a bad investment of state funds and has negative effects on human health and the climate. Slash burning releases massive quantities of carbon dioxide in other parts of the world. A DNR study from November 2008 shows climate and human health impacts from the use of biomass for power production. The DNR itself has questions about this practice.

Persons Testifying (Technology, Energy & Communications): (In support) Peter Goldmark and Craig Partridge, Department of Natural Resources; and Bob Guenther, International Brotherhood of Electric Workers 77.

(In support with concerns) Stephen Bernath, Department of Ecology.

(With concerns) Tim Boyd, Vaagen Brothers, Boise Cascade, Boise Paper.

Persons Testifying (General Government Appropriations): (In support) Peter Goldmark, Commissioner of Public Lands.

(Opposed) Dr. Willam Simmons; and Duff Badgley, No Biomass Burn.

Persons Signed In To Testify But Not Testifying (Technology, Energy & Communications): None.

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