Chapter 79.150 RCW
FOREST BIOMASS MATERIALS LOCATED ON STATE LANDS

Sections
79.150.010 Findings.
79.150.020 List of potential sources of forest biomass on state lands.
79.150.030 Forest biomass supply contracts.
79.150.040 Lease of state land for resource use derived from biomass.
79.150.050 Evaluation of supply agreements under RCW 79.150.030 and 79.150.040—Report to the legislature—Demonstration project authorized.

RCW 79.150.010 Findings. The legislature finds that the utilization of forest biomass materials located on state lands will assist in achieving the purposes of the forest biomass energy demonstration project under RCW 43.30.835, facilitate and support the emerging forest biomass market and clean energy economy, and enable the department to encourage biomass energy development on state trust lands for the trust land's potential long-term benefits to trust beneficiaries. The legislature finds that biomass utilization on state forestlands must be accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions. [2010 c 126 § 1.]

RCW 79.150.020 List of potential sources of forest biomass on state lands. (1) The department may maintain a list of all potential sources of forest biomass on state lands for the purposes of identifying and making forest biomass, as defined in RCW 79.02.010, available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy, biofuels, for use in a biorefinery, or any other similar use. Prior to entering an agreement authorized by RCW 79.150.030(1) or 79.150.040, the department shall complete an inventory of the available biomass in the area that will be subject to the agreement, except that no inventory will be required as a prerequisite for demonstration projects authorized pursuant to RCW 43.30.835. The inventory must contain, at a minimum, an estimated amount of the forest biomass available in the area that will be subject to the agreement and a determination of the ecological and operational sustainability of the volumetric limit established by the agreement under RCW 79.150.030(5).
(2) The data developed for each inventoried area will be compiled for the list authorized by this section. In order to utilize the list to limit or terminate any agreement authorized under chapter 126, Laws of 2010, the department must 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. [2010 c 126 § 2.]

RCW 79.150.030 Forest biomass supply contracts. (1) The department is authorized to enter forest biomass supply contracts on
terms and conditions acceptable to the department for terms of up to
five years, except as provided in subsection (4) of this section, for
the purpose of providing a supply of forest biomass during the term of
the contract except as the term of the contract may be limited under
subsection (2) of this section, provided that such a contract must
terminate automatically upon the removal of the agreed volume of
biomass and the completion of other conditions of the contract.

(2) The department may authorize the sale of forest biomass in a
contract for the sale of valuable materials under chapter 79.15 RCW
provided that the department complies with the provisions of this
chapter and: (a) Requires a separate bid and selects an apparent
highest bidder for the forest biomass separately from the sale of
valuable materials; (b) expressly includes forest biomass as an
element of the sale of the valuable materials to be sold in the sales
contract; or (c) a combination of (a) and (b) of this subsection. The
term of the contract for the removal of biomass, if the sale is made
in conformance with this subsection, must not exceed the term of the
contract for valuable materials sold under chapter 79.15 RCW.

(3) The department may: (a) Enter into direct sales contracts for
forest biomass, without public auction, based upon procedures adopted
by the board to ensure competitive market prices and accountability;
or (b) enter into contracts for forest biomass at public auction or by
sealed bid to the highest bidder in a manner consistent with the sale
procedures established for the sale of valuable materials in
chapter 79.15 RCW or as may be adopted by the board.

(4) In the event a contracting entity makes a qualifying capital
investment of fifty million dollars or more, the department may enter
into an agreement for up to fifteen years. Such an agreement must
include provisions that are periodically adjusted for market
conditions. In addition, the conditions of the contract must include
provisions that allow the department, when in the best interest of
trust beneficiaries, to maintain the availability of biomass resources
on state lands to existing pulp and paper operations or other existing
biomass processing operations that are using such resources, in
quantities typical for the period of five years preceding June 10,
2010. For the purposes of this section, "qualifying capital
investment" means a planned and committed investment at the time the
contract is set with the requirement that at least fifty million
dollars be invested before the removal of any biomass under the
contract.

(5) The department 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. The department shall adopt general
procedures for making the biomass supply availability determinations
under this subsection. The procedures must be written to ensure that
biomass utilization on forestlands managed by the department is
accomplished in a manner that retains organic components of the forest
necessary to restore or sustain forest ecological functions. The
department shall develop utilization standards and operational methods
in recognition of the variability of on-site conditions. The
department 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 department
determines, under RCW 79.150.020, that the available supply has been
reduced to a point such that further removal of forest biomass may not

[ 2 ]
be ecologically or operationally sustainable or may adversely affect long-term forest health.

(6) At the expiration of the contract term, the department may renew the contract for up to three additional five year periods on terms and conditions acceptable to the department, if the department finds: (a) An ecologically and operationally sustainable supply of forest biomass is available for the term of the contract; (b) the payment under the contract represents the fair market value at the time of the renewal; and (c) the purchaser agrees to the estimated amount of biomass material available.

(7) Where the department sells forest biomass in a contract for sale of valuable materials under subsection (2) of this section, any valuable material conveyed as timber in such a contract must count toward the achievement of annual or decadal targets developed in the sustainable timber harvest calculation required by RCW 79.10.320, or similar targets for timber harvest volume, even where the purchaser uses that material as a biomass energy feedstock. All other biomass volume conveyed as authorized in this chapter must not be counted toward such sustainable timber harvest targets.

(8) All contractors and their operations authorized under this section shall comply with all applicable state and federal laws and regulations. [2010 c 126 § 3.]

RCW 79.150.040 Lease of state land for resource use derived from biomass. The department is authorized to lease state lands for the purpose of the sale, exploration, collection, processing, storage, stockpiling, and conversion of biomass into energy or biofuels, the development of a biorefinery, or for any other resource use derived from biomass if the department is able to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust and if the lease is in the best interest of the state and the affected trust, as follows:

(1) Leases authorized under this chapter may be entered into by public auction, in accordance with the provisions of RCW 79.13.140, or by negotiation.

(2) All leases must contain such terms and conditions as may be prescribed by the department in accordance with the provisions of chapter 126, Laws of 2010 and to ensure that removal of forest biomass is ecologically and operationally sustainable. Leases authorized under chapter 126, Laws of 2010 may be for a term of no more than fifty years.

(3) For leases that involve the development of biomass processing, biofuel manufacturing, or biomass energy production facilities, the department may include provisions for reduced rent until an approved plan of development is completed and the facility is operational, provided that provisions are included to require: (a) Adequate assurances to protect the department's interest in a future rental income stream; (b) the demonstration of reasonable progress consistent with an approved plan of development; and (c) a lump sum payment to the department in the amount of the difference between the fair market rent and the reduced rent, if the approved plan of development is not completed in the time required in the plan.

(4) The department may require the payment of production rent or other compensation for the use of the land and biomass materials on the land. If the department is not entering a supply contract under RCW 79.150.030 for any forest biomass to be supplied for the lease
purposes from the leased land, then the department must require a royalty payment for the contribution to value of any product created by the lessee that is associated with forest biomass removed from the leased land in an amount fixed by the board.

(5) All lessees and their operations authorized under this section shall comply with all applicable state and federal laws and regulations. [2010 c 126 § 4.]

**RCW 79.150.050 Evaluation of supply agreements under RCW 79.150.030 and 79.150.040—Report to the legislature—Demonstration project authorized.** (1) For the purpose of improving forest health on state trust lands, and 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 department of natural resources shall evaluate how the supply agreements in RCW 79.150.030 and 79.150.040 could be utilized to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional types of timber purchasers. The department shall report its findings to the appropriate committees of the legislature by December 15, 2010, and the evaluation must at a minimum identify how such supply agreements could:

(a) Ensure the department of natural resources meets its fiduciary responsibility to the state's trust beneficiaries;

(b) Restore or sustain a competitive market for state timber sales;

(c) Generate returns for the trust that are commensurate with fluctuating market prices; and

(d) Ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

(2) For the purposes of proving the concepts evaluated in this section, the department may, in addition to the authorities granted in RCW 79.150.030, establish a five-year forest health and fuel reduction supply agreement demonstration project. Solicitation of private industry partners for such a project must be competitive, must focus on areas where traditional forest products manufacturing infrastructure and rural jobs have been lost, and should consider prioritizing partners utilizing materials for both traditional forest products and biomass energy conversion. [2010 c 126 § 5.]