



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	05/05/03	Bill No:	SB 557
Tax:	Timber Products User Forest Restoration Fee	Author:	Kuehl
Board Position:		Related Bills:	

BILL SUMMARY

This bill would impose a timber products user forest restoration fee on every consumer at the time timber products are purchased for consumption in this state. Among other things, the fee would provide funding for the administration and review of timber harvest plans.

Summary of Amendments

Since the previous analysis, amendments added and then removed the imposition of a sales tax on the retail sale of timber products, and instead would impose an excise tax of one cent per board foot on consumers of timber products, which would be administered by the Board under the Fee Collection Procedures Law. Additional amendments defined key terms and also allow the retailer to retain three percent of the fee collected to cover the cost of administration.

ANALYSIS

Current Law

Under existing law, Section 38115 of the Revenue and Taxation Code imposes a timber yield tax on the following:

- Every timber owner who harvests his or her timber or causes it to be harvested, and
- Every timber owner of felled or downed timber who acquires title to such felled or downed timber in this state from an exempt person or agency, as described, and
- Every person who, without authorization, intentionally or unintentionally harvests or causes to be harvested timber owned by another.

The timber yield tax rate is currently set at 2.9 percent. The amount of tax is calculated according to the volume of timber harvested, the established value for the species harvested, and the tax rate.

The timber yield tax is collected by the Board and deposited in the State Treasury to the credit of the Timber Tax Fund. After administrative costs are deducted, remaining revenues are returned to local agencies, as specified.

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Proposed Law

This bill would add Article 10 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code to impose a fee on the consumer at the time of the purchase of a timber product for consumption in this state. The fee would be one cent (\$0.01) per board foot imposed on lumber and related products. This bill would also require that a user fee on composite products manufactured from various wood and non-wood materials conform to the appropriate product that most closely applies to the product that is sold.

The Board would administer the fee imposed in accordance with the Fee Collection Procedures Law, which contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board.

A timber product supplier would be required to collect the fee from a consumer at the time it sells a timber product to the consumer. The fee would be required to be added to and stated separately in the billing to the consumer. A consumer in this state would be liable for the fee until it has been paid to the state, except that payment to a timber product supplier that is registered with the Board is sufficient to relieve the user from further liability.

The timber product supplier would be authorized to retain three percent of the fee as reimbursement for any costs associated with the collection of the fee. The remainder of the fee would be remitted by the timber product supplier to the Board, which is due and payable on or before the 25th day of the calendar month following each quarterly period for which the fee is due. A feepayer would also be required to make out a return for the preceding quarterly period on or before the 25th day of the month following each quarterly period.

The Board would transmit the payment to the Timber Products User Forest Restoration Fund, which this bill would establish in the State Treasury. The Board would also be reimbursed for its administrative costs for collecting, auditing, and making refunds with the fund. Administrative costs reimbursed to the Board may not exceed three percent of the fund per fiscal year. Money in the fund would be spent solely for the following purposes:

- To pay refunds.
- To assume in its entirety the existing General Fund appropriations as they existed on December 31, 2002, for the administration and review of all operations of all departments, boards, and commissions that review timber harvesting, as specified.
- To provide increases above the former General Fund appropriations for the maintenance of existing operations of the reviewing agencies, and to provide increases that result in programmatic improvements to the operations of the reviewing agencies, or for any other appropriate increases.
- To provide necessary additional support to the reviewing agencies, in order to comply with changes in statutory law passed by the Legislature and approved by the Governor or to comply with regulations that are adopted by any of the reviewing agencies.

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- To create opportunities for cross-training among reviewing agencies, in order to educate these agencies about the responsibilities, perspectives, and analytical issues faced by the other reviewing agencies.
- To establish a worker retraining program and develop other economic opportunities for timber workers who have been displaced.
- To hire professional policy staff for the State Board of Forestry and Fire Protection.
- To study other efforts to reduce regulatory costs to the state and to forested landowners that are consistent with the principles of the Forest Stewardship Council.
- To create within the Department of Forestry and Fire Protection, a cost share program.

The fund would also reimburse the costs to the Department and the State Board of Forestry and Fire Protection to create a broad-based stakeholder group that would do all of the following:

- Explore the suitable reuse and conversion of closed mills and other timber industry facilities in California to productive uses.
- Recommend the most efficient way to develop new milling and processing capacity in California that is certifiable by the Forest Stewardship Council.
- Make recommendations that will develop and maintain more "value-added" timber processing and manufacturing facilities in California to benefit the economic status of rural communities and workers.

The bill would become effective January 1, 2004.

Background

The basic requirement of the Forest Practice Act is that timber harvest operations comply with a permit, called a "Timber Harvest Plan" that has been prepared by a registered professional forester. Timber harvest plans (THPs) are reviewed by a variety of state agencies, including the California Department of Forestry and Fire Protection, Departments of Conservation, Fish and Game, and the State Water Resources Control Board, at a general fund cost of approximately \$22.1 million annually according to the Legislative Analyst's Office (LAO). The costs of timber harvest review have historically been completely absorbed by the state.

The LAO has advocated that timber harvest review costs be entirely covered by timber operators. As that agency stated in its 2003-04 Budget Analysis: "There is a direct link between the THP review and enforcement and those who directly benefit from it through their harvesting of timber. In other words, without the state review and approval of the THP, businesses would not be able to harvest timber. Doing so would be consistent with the Legislature's actions in requiring the costs of most other environmental regulatory programs, such as those protecting air and water quality, to be fully or partially reimbursed through industry fees and assessments."

The LAO reviewed a number of potential ways that fees could be structured to recover state agency costs related to THPs, which include the following:

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- Per Acre Fee. Timber operators would pay a fee based on the number of acres proposed to be harvested in the submitted THP, without regard to the value of the proposed harvest. Under this option, fees could be structured with a sliding scale so that above a certain minimum number of acres, the cost per acre could be reduced. The fees would be payable to CDFFP upon submission of a THP.
- A Flat Fee Per THP. Timber operators would pay a flat fee for each THP submitted to CDFFP, without regard to the value of the proposed harvest. The fees would be payable to CDFFP upon submission of a THP.
- A Fee for Service Basis. A fee would be assessed based on the costs of state agencies related to reviewing a particular THP. Under this option, THPs requiring more state agency review time would be assessed a higher fee. A fee would be collected at the conclusion of the review process.
- A Timber Yield Fee. Timber operators would pay a fee based on the value of timber that is harvested. Such a fee could be collected using the existing timber tax collection system in which timber owners are required to report each quarter the value of timber harvested to the Board for payment of timber yield taxes, based on the value of the harvested timber.

Of the various potential fee mechanisms, the LAO's preferred fee structure would be a timber yield fee. This is because unlike the first three options, the timber yield fee would be directly proportional to the monetary gain from the harvest. This addresses concerns with the flat fee that all timber operators would pay the same regardless of the value harvested. Similarly, there is a concern that under a per acre fee, timber operators submitting the same size THP, but which represent different harvest values, would pay the same fee. It was also found that a timber yield fee is preferable because unlike the other options, a yield fee would use an existing process to collect the fee, thereby saving the administrative costs to set up a totally new collection process.

In 1999, Assembly Member Keely introduced AB 748 which would have required the State Board of Forestry and Fire Protection to adopt regulations establishing a reasonable THP filing fee not to exceed \$1,000 per THP filed. The money deposited would have been allocated annually, upon appropriation, to CDF and other agencies participating in THP review. That bill died on the Assembly third reading file.

Similar legislation, AB 1172 (Keeley), was introduced last year to enact a fee on timber yield to cover state agency costs for THP review and enforcement. That bill would have imposed a timber yield fee upon timber that is harvested subject to that act to be paid by any person or entity that harvests timber or causes it to be harvested, every owner of felled or downed timber who acquires title to the felled or downed timber from an exempt person or agency, or any person or entity who, without authorization, intentionally or unintentionally harvests, or causes to be harvested, timber owned by another. Assembly Bill 1172 failed passage out of the Senate Natural Resources and Wildlife Committee.

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COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to reevaluate financing of the THP review process that currently draws from the General Fund. In addition, this bill is intended to fund watershed and wildlife restoration projects and economic development projects that are closely associated with timber harvesting activities in California.
2. **Summary of amendments.** The **introduced version** of this bill would have imposed an excise tax of one cent per board foot on consumers of timber products. **April 7** amendments removed the excise tax provisions and instead imposed a sales tax of one-half percent on the retail sale of timber products. Additional amendments added definitions of key terms, provided that the retailer may retain three percent of the fee to cover costs of administration, and provided additional criteria for how the funds may be expended. **April 29** amendments removed the imposition of a sales tax on the retail sale of timber products, and instead would impose an excise tax of one cent per board foot on consumers of timber products. **May 5** amendments added definitions of key terms and added provisions that would require the Board to prescribe by regulation a method by which a timber product supplier shall provide to a consumer the board foot content or board foot equivalent content for each product sold by that timber product supplier.
3. **This bill could complicate timber product supplier's records and reporting.** Timber product suppliers already must collect and remit sales and use tax on the retail sale of timber products in California. Timber product suppliers most likely sell other tangible personal property subject to sales and use tax. Adding an additional fee that would be due on the sale of timber products would require retailers to keep track of timber product sales separately from other sales of tangible personal property.

Additionally, smaller timber product suppliers may find collecting the fee burdensome. Larger suppliers would have the ability to program the amount of the fee for each product into its computer system. Therefore, the fee would be automatically added to the purchase price once the product code or UPC is entered at the register. Cashiers at smaller supply stores, which are typically not computerized, would have to determine the board feet for each timber product sold. As such, the fee would be collected based on cashier judgment, which would likely lead to reporting errors.

4. **Bill could set precedents.** Imposing varying fees on specific commodities complicates tax administration and could set a precedent for establishing multiple fees on other classes of tangible personal property. This results in increasing administrative costs to the Board and an increased record-keeping burden on feepayers.

In addition, authorizing timber product suppliers to retain a percentage of the fee as reimbursement for any costs associated with the collection of the fee could set a precedent for other taxes and fees administered by the Board. Of the 29 taxes and fees currently administered by the Board, reimbursement is only allowed under the

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California Tire Fee Law and the Cigarette and Tobacco Products Tax Law. The California Tire Fee Law authorizes a retail seller to retain 3 percent of the fee as reimbursement of collection costs. The Cigarette and Tobacco Products Tax Law provides that cigarette tax stamps are to be sold to licensed distributors at a specified discount, which is intended to help defray the cost (leasing of equipment/labor cost) to the distributor for affixing the stamps.

5. **The fee on out-of-state timber purchases should not be problematic.** Imposing a new fee on the sale of timber products should not lead to a trend of consumers purchasing their timber products from out-of-state retailers in an attempt to avoid the timber products forest restoration fee collected by California retailers. Timber products are not conducive to Internet or mail order shopping. Therefore, such products are purchased from brick and mortar locations. So it seems reasonable to assume that out-of-state purchases of timber products would likely be limited to consumers along California's borders who already purchase timber products at such locations.

The amount of the fee would also deter consumers from switching to out-of-state purchases of timber products. According to the bill, a typical new house uses about 10,000 board feet of lumber, equivalent to a fee of approximately \$100. Since the fee is reasonably low, it is unlikely that it would change a consumer's purchasing behavior. Having timber products delivered from out-of-state or traveling out-of-state to purchase such products would not seem to be cost effective alternatives.

6. **Cost cap could be problematic.** This bill would create a new fee program to be administered by the Board. The provisions in this bill provide that the Board would be reimbursed for the costs of administration for collecting, auditing, and making refunds of the new fee. However, the reimbursement to the Board would be limited to an amount not to exceed 3 percent of the fund per fiscal year. Based on the current revenue estimate of \$66 million annually, the Board would be reimbursed for costs up to \$1.98 million annually. Since the implementation and administration costs have not yet been estimated by the Board, it is not known at this time if the cost cap would provide the Board with sufficient funding to administer the fee.
7. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2004, which is in the middle of the state's fiscal year. In order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2003-04 budget.
8. **Timber products user forest restoration fee would not be subject to sales and use tax.** The proposed timber products user forest restoration fee is imposed on the consumer, rather than the retailer. Since the fee is imposed on the consumer, it is not considered part of gross receipts received by the retailer, and therefore, is not subject to the sales and use tax. Any amounts the retailer may charge above the proposed fee amount would be considered part of the retailers gross receipts, and would be subject to sales and use tax.

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COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE**Background, Methodology, and Assumptions**

The Western Wood Products Association, the trade association which represents lumber manufacturers in 12 Western states and Alaska, estimates that U.S. lumber consumption in 2003 should reach an all time high of 54.7 billion board feet. Based on the California's population, it is estimated that 6.6 billion board feet would be consumed in this state ($12\% \times 54.7$ billion board feet = 6.6 billion).

The bill initiates a fee in the amount of \$0.01 per board foot of lumber purchased and consumed in California. This bill would also allow the retailer of the lumber to retain three percent of the fee to cover his or her cost of administration. In 2003, this would have generated an estimated revenue of \$64 million ($\0.01×6.6 billion board feet $\times 97$ percent = \$64 million).

Revenue Summary

This bill would generate approximately \$64 million annually for the Timber Products User Forest Restoration Fund.

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