

# HB 104 FAQ (Prepared for Rep. Cronk)

## **I. What are the current types of timber sales?**

There are six types of timber sales allowed under current law.

1. Small, negotiated sales (AS 38.05.115) – Negotiated sales of 500 thousand board measure or less for any purpose.
2. Emergency sales (11 AAC 71.005) – Sales, on an expedited basis, of threatened or threatening timber stands.
3. Salvage sales (AS 38.05.117) - Sales of dead or dying trees.
4. Local manufacturer negotiated sales (AS 38.05.118) – long term contract (up to 25 years) to local businesses. Can be round logs or other wood products.
5. Competitive sales (AS 38.05.120) – Sealed bid auctions of large lots, usually to be exported.
6. High-value-added negotiated sales (AS 38.05.123) – Up to ten-year contract for up to 10 million board feet per year. Targeted for local wood product businesses that make finished products (furniture, doors, etc.).

## **II. What does HB 104 do?**

HB 104 brings the current “emergency sales” into statute, clarifies the difference between salvage and expedited sales, and adjusts the contract terms for other negotiated sale processes.

## **III. What is the current salvage sale process?**

Salvage sales are a way for the DNR to remove dead and dying timber from state lands by selling it rather than burning it. These state resources are different from standing trees, as they no longer provide the same value to the forest. Therefore, the DNR is allowed to dispose of these zero value resources without going through the full timber sale process.

Under current law, salvage sales are specified in two categories:

1. Timber that will lose substantial economic value within two years because of fire, insect infestation, or disease.
2. Timber that is cleared for conversion to non-forest use.

The second type of salvage timber is currently exempt from AS 38.05.112 (forest land use plan, or “FLUP”) and AS 38.05.113 (five-year schedule). This means that, under current law, this type of salvage sale only requires a best interest finding (“BIF”).

The first type of salvage sale is currently only exempt from AS 38.05.113 (five-year schedule). Therefore, these types of salvage timber currently require a FLUP and BIF, which can occur concurrently.

**IV. How does this bill propose to change the salvage sale process?**

HB 104 would define the salvage sale process as the disposal of dead timber. The timber could be killed by nature or department activity. This includes things like being killed in a forest fire, eaten by insects, downed in a windstorm, bulldozed to create fire breaks, cleared to build a public road, etc. The bill brings all dead timber into the category of salvage sales that are exempt from the FLUP.

In all these situations, the timber no longer has value as a standing tree. In fact, it arguably has negative value as it poses a fire hazard. Therefore, receiving any compensation for this dead timber is inherently in the state's best interests. For this reason, the bill proposes to exempt salvage sales from the prescriptive best interest finding outlined in AS 38.05.035(e).

**V. Do these changes to the salvage sale allow the commissioner to give "sweetheart deals"?**

No. All dispositions of state resources must meet the constitutional requirement of maximum benefit (Art. 8, Sec. 2). Therefore, the commissioner must assert that selling salvage timber provides more benefit than the alternative. They must also provide some form of public notice of the proposed sale.

**VI. Do these changes to the salvage sale process deny the public the right to object to a salvage sale?**

No. All dispositions of state resources must meet the constitutional requirement of public notice (Art. 8, Sec. 10). Therefore, the commissioner cannot make a sale without the public's awareness. The waiver of the best interest finding does not remove the need for notice. It simply puts these sales on par with other resources disposals which are already exempt from the BIF.

Disposals exempted from the BIF under *current* law include negotiated timber sales under AS 38.05.115, shore fishery site leases, mineral claims and leases, and all permits and authorizations revocable by the commissioner.

**VII. Are expedited timber sales in current law?**

Yes. Under 11 AAC 71.005, the commissioner may sell timber on an expedited basis under the following conditions:

1. To avoid the loss of market value of timber that has been damaged by fire, insect infestation, or an act of nature;
2. To avoid the loss of the market value of timber that is threatened by insect infestation;
3. To create fire breaks;
4. To reduce fuel-loading of the forest; or
5. To reduce the spread of insect infestation

These sales are expedited by exempting them from the five-year schedule requirement. However, they do require a best interest finding and a forest land use plan. There is no acreage limitation or defined process for these expedited sales in current law.

### **VIII. How does the bill change expedited timber sales?**

Under current law, salvage sales and expedited timber sales (called “emergency sales” in current law) are blended. There is not a clear delineation between the salvage and emergency sales. Both are exempt from the five-year schedule, but the exemption from the FLUP applies only to the timber cleared for conversion to a non-forest use.

The bill proposes to clearly delineate salvage sales as reactive sales to dispose of dead timber, and expedited timber sales as preventive forest management. Therefore, the bill would bring the concepts currently found in regulation into statute but assign the conditions according to this delineation.

In short, the only change the bill makes to current law is the exemption from the forest land use plan. The rationale is that speed is important in these situations, so taking time to design roads and designate campsite areas are inefficient uses of time. These sales still require a best interest finding, including a public comment period. That finding cannot be made without an understanding of the proposed processes that the FLUP is intended to lay out. Therefore, the exemption from the FLUP in these situations is merely a reduction in redundancy.

### **IX. Why is this new process necessary?**

The intent of this bill is to allow the DNR to better manage our forests and forested lands. By reducing the risk of fire, the department can reduce the costs of suppression and the risks that fires pose. The problem is that actively managing a forest is an expensive endeavor. This bill proposes paying those costs with the timber itself, rather than hiring contractors or state employees to do the work. By allowing commercial operators to reduce fuel load and create fire breaks, they receive compensation by using the timber for commercial operations. This is a win-win situation for the state.

It's also worth noting that this is not a new power delegated to the commissioner. These types of sales are already allowed, but without the clear guidance of the legislature.

### **X. Is the authority provided in this bill too broad, as the entire state is at risk of fire or insect infestation?**

It is important to keep two things in mind. First, the commissioner cannot violate the sustainable yield principle required by the constitution (art. 8, section 4). Therefore, a limit to the amount of timber that can be sold is inherent. Second, the delegated authority to use the expedited timber sale process is constrained in the bill.

On page 8, lines 12 – 13, it is clearly stated that the commissioner must make a best interest finding that includes a determination that the timber is in an area “subject to high annual fire danger or insect or diseases epidemics.” While most of the state is prone to fire danger, the point of these sales is to take preventative action to reduce that danger. That preventative action must be urgent, which necessitates the expedited process. If the sale is not urgent, the commissioner should use the standard five-year schedule process.

**XI. Does the phrase “the commissioner is not required to notice an expedited timber sale under this section...” violate the constitution?**

No. The rest of the sentence clarifies that the exemption only applies to “a timber sale schedule under AS 38.05.113.” This is simply a reiteration that expedited timber sales are exempt from the five-year schedule, including the public notice required by that law. Expedited timber sales would still be required to be noticed as part of the required best interest finding.