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HOUSE BILL 1852

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Boldt, Dunn, B. Chandler, Lisk and Mielke

Read first time 02/08/1999. Referred to Committee on State Government.

1            AN ACT Relating to the Columbia River Gorge commission; adding a  
2 new section to chapter 43.97 RCW; creating new sections; repealing RCW  
3 43.97.015; and providing a contingent effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.      **Sec. 1.**      RCW 43.97.015 (Columbia River Gorge  
6 Compact--Columbia River Gorge commission) and 1987 c 499 s 1 are each  
7 repealed.

8            NEW SECTION.      **Sec. 2.**      A new section is added to chapter 43.97 RCW  
9 to read as follows:

10            The legislature of the State of Washington hereby ratifies the  
11 Columbia River Gorge Compact set forth in this section, and the  
12 provisions of such compact hereby are declared to be the law of this  
13 state upon such compact becoming effective as provided in Article III  
14 and subject to sections 3 and 4 of this act.

15            A compact is entered into by and between the States of Washington  
16 and Oregon, signatories hereto, with the consent of the Congress of the  
17 United States of America, granted by an Act entitled, "The Columbia  
18 River Gorge National Scenic Area Act," P.L. 99-663.

1 ARTICLE I

2 COLUMBIA GORGE COMMISSION ESTABLISHED

3 a. The States of Oregon and Washington establish by way of this  
4 interstate compact a regional agency known as the Columbia River Gorge  
5 Commission. The commission established in accordance with this compact  
6 shall have the power and authority to perform all functions and  
7 responsibilities in accordance with the provisions of this compact and  
8 of the Columbia River Gorge National Scenic Area Act (the federal Act),  
9 which is incorporated by this specific reference in this agreement.  
10 The commission's powers shall include, but not be limited to:

11 1. The power to sue and be sued.

12 2. The power to disapprove a land use ordinance enacted by a  
13 county if the ordinance is inconsistent with the management plan, as  
14 provided in P.L. 96-663, Sec. 7(b)(3)(B).

15 3. The power to enact a land use ordinance setting standards for  
16 the use of nonfederal land in a county within the scenic area if the  
17 county fails to enact land use ordinances consistent with the  
18 management plan, as provided in P.L. 99-663, Sec. 7(c).

19 4. According to the provisions of P.L. 99-663, Sec. 10(c), the  
20 power to review all proposals for major development action and new  
21 residential development in each county in the scenic area, except urban  
22 areas, and the power to disapprove such development if the commission  
23 finds the development is inconsistent with the purposes of P.L. 99-663.

24 b. The commission shall appoint and remove or discharge such  
25 personnel as may be necessary for the performance of the commission's  
26 functions, irrespective of the civil service, personnel or other merit  
27 system laws of any of the party states.

28 c. The commission may establish and maintain, independently or in  
29 conjunction with any one or more of the party states, a suitable  
30 retirement system for its full-time employees. Employees of the  
31 commission shall be eligible for social security coverage in respect of  
32 old age and survivors insurance provided that the commission takes such  
33 steps as may be necessary pursuant to federal law to participate in  
34 such program of insurance as a governmental agency or unit. The  
35 commission may establish and maintain or participate in such additional  
36 programs of employee benefits as may be appropriate.

37 d. The commission shall obtain the services of such professional,  
38 technical, clerical and other personnel as may be deemed necessary to  
39 enable it to carry out its functions under this compact. The

1 commission may borrow, accept, or contract for the services of  
2 personnel from any state of the United States or any subdivision or  
3 agency thereof, from any interstate agency, or from any institution,  
4 person, firm or corporation.

5 e. Funds necessary to fulfill the powers and duties imposed upon  
6 and entrusted to the commission shall be provided as appropriated by  
7 the legislatures of the states in accordance with Article IV. The  
8 commission may also receive gifts, grants, endowments and other funds  
9 from public or private sources as may be made from time to time, in  
10 trust or otherwise, for the use and benefit of the purposes of the  
11 commission and expend the same or any income therefrom according to the  
12 terms of the gifts, grants, endowments or other funds.

13 f. The commission may establish and maintain such facilities as may  
14 be necessary for the transacting of its business. The commission may  
15 acquire, hold and convey real and personal property and any interest  
16 therein.

17 g. The commission shall adopt bylaws, rules, and regulations for  
18 the conduct of its business, and shall have the power to amend and  
19 rescind these bylaws, rules and regulations. The commission shall  
20 publish its bylaws, rules and regulations in convenient form and shall  
21 file a copy thereof and of any amendment thereto, with the appropriate  
22 agency or officer in each of the party states.

23 ARTICLE II

24 THE COMMISSION MEMBERSHIP

25 a. The commission shall be made up of twelve voting members  
26 appointed by the states, as set forth herein, and one non-voting member  
27 appointed by the U.S. Secretary of Agriculture.

28 b. Each state governor shall appoint the members of the commission,  
29 with senate confirmation, as provided in the federal Act as follows:  
30 Three members who reside in the State of Oregon, including one resident  
31 of the scenic area, to be appointed by the Governor of Oregon; and  
32 three members who reside in the State of Washington, including one  
33 resident of the scenic area, appointed by the Governor of Washington.

34 c. Six members shall be provided as follows: Three members who are  
35 elected in a county election in the counties of Clark, Klickitat, and  
36 Skamania in Washington, and three members who are elected in a county  
37 election in the counties of Hood River, Multnomah, and Wasco in Oregon.

1 Such elections shall be held on the same schedule and in the same  
2 location as regularly held local elections, beginning in November 2000.  
3 d. The terms of the members and procedure for filling vacancies  
4 shall all be as set forth in the federal Act.

5 ARTICLE III

6 COLUMBIA RIVER GORGE APPEALS BOARD

7 a. There is hereby created the Columbia River Gorge Appeals Board.  
8 The board shall consist of four members qualified by experience and  
9 training in pertinent matters pertaining to land use.

10 b. Two members of the board shall be appointed by the Governor of  
11 the State of Washington, with senate confirmation, and be residents of  
12 that state, and two members shall be appointed by the Governor of the  
13 State of Oregon, with senate confirmation, and be residents of that  
14 state.

15 c. At least one member from Washington shall have been admitted to  
16 the practice of law in the State of Washington, and one member from  
17 Oregon shall have been admitted to the practice of law in the State of  
18 Oregon.

19 d. The board shall have jurisdiction to hear any and all claims  
20 regarding land use decisions made by the Columbia River Gorge  
21 Commission, including any decisions that the commission makes regarding  
22 county ordinances. Upon the request of any party, the board shall  
23 promptly schedule a conference for the purpose of attempting to mediate  
24 the dispute. The mediation conference shall be held prior to the  
25 hearing on not less than seven days' advance written notice to all  
26 parties. All other proceedings pertaining to the appeal shall be  
27 stayed until completion of mediation, which shall continue so long as  
28 all parties consent: PROVIDED, That this shall not prevent the appeals  
29 board from deciding motions filed by the parties while mediation is  
30 ongoing: PROVIDED FURTHER, That discovery may be conducted while  
31 mediation is ongoing if agreed to by all parties. Mediation shall be  
32 conducted by an administrative appeals judge or other duly authorized  
33 agent of the board who has received training in dispute resolution  
34 techniques or has a demonstrated history of successfully resolving  
35 disputes, as determined by the appeals board. A person who mediates in  
36 a particular appeal shall not participate in a hearing on that appeal  
37 or in writing the decision and order in the appeal. Documentary and  
38 other physical evidence presented and evidence of conduct or statements

1 made during the course of mediation shall be treated by the mediator  
2 and the parties in a confidential manner and shall not be admissible in  
3 subsequent proceedings in the appeal except in accordance with the  
4 provision of the federal rules of evidence operating to compromise  
5 negotiations.

6 In addition, either a county or the Columbia River Gorge Commission  
7 may also request mediation. In such an instance, if deemed reasonable  
8 by the board, the board shall call a meeting of those considered by the  
9 board to be essential to the best implementation of the Columbia River  
10 Gorge National Scenic Area Act. The board may also make  
11 recommendations to both parties who have entered into mediation and to  
12 both governors for the cooperation and best implementation of the  
13 federal Act.

14 e. Members shall be appointed for a term of six years and shall  
15 serve until their successors are appointed. Vacancies shall be filled  
16 by appointment of the governor from which state the member was  
17 initially appointed, and shall last for the unexpired portion of the  
18 term in which such vacancy occurs. The terms of the first four members  
19 of the board shall be staggered so that their term shall expire after  
20 two, four, and six years.

21 f. Any member may be removed for inefficiency, malfeasance, or  
22 misfeasance in office, upon specific written charges filed by the  
23 governor from which state the member is appointed, who shall transmit  
24 such written charges to the member accused and to the chief justice of  
25 the supreme court in the state from which the member is appointed. The  
26 chief justice shall thereupon designate a tribunal composed of three  
27 judges of the superior court from the state from which the member is  
28 appointed to hear and adjudicate the charges. Such tribunal shall fix  
29 the time of the hearing, and the decision of such tribunal shall be  
30 final and not subject to review by the supreme court. Removal of any  
31 member by the tribunal shall disqualify such member for reappointment.

32 g. Each member of the board shall not be a candidate for nor hold  
33 any other public office or trust, and shall not engage in any  
34 occupation or business interfering with or inconsistent with his or her  
35 duty as a member, nor shall he or she serve on or under any committee  
36 of any political party. Each member of the board shall not for a  
37 period of one year after the termination of his or her membership, act  
38 in a representative capacity before the appeals board on any matter.

1 h. In all appeals the board shall have all powers relating to  
2 administration of oaths, issuance of subpoenas, and taking of  
3 depositions, but such powers shall be exercised in conformity with  
4 federal law. All proceedings before the board or any of its members  
5 shall be conducted in accordance with such rules of practice and  
6 procedure as the board may prescribe. The board shall publish such  
7 rules and arrange for the reasonable distribution thereof.

8 i. The board shall arrange to hold hearings, as required by its  
9 schedule, in both Washington and Oregon.

10 ARTICLE IV

11 EFFECTIVE DATE OF COMPACT AND COMMISSION

12 This compact shall take effect, and the commission may exercise its  
13 authorities pursuant to the compact and pursuant to the Columbia River  
14 Gorge National Scenic Area Act when it has been ratified by both states  
15 and upon the appointment of four initial members from each state. The  
16 date of this compact shall be the date of the establishment of the  
17 commission.

18 ARTICLE V

19 FUNDING

20 a. The States of Washington and Oregon hereby agree to provide by  
21 separate agreement or statute of each state for funding necessary to  
22 effectuate the commission, including the establishment of compensation  
23 or expenses of commission members from each state which shall be paid  
24 by the state of origin.

25 b. The commission shall submit to the Governor or designated  
26 officer or officers of each party state a budget of its estimated  
27 expenditures for such period as may be required by the laws of that  
28 jurisdiction for presentation to the legislature thereof.

29 c. Subject to appropriation by their respective legislatures, the  
30 commission shall be provided with such funds by each of the party  
31 states as are necessary to provide the means of establishing and  
32 maintaining facilities, a staff of personnel, and such activities as  
33 may be necessary to fulfill the powers and duties imposed upon and  
34 entrusted to the commission.

35 d. The commission's proposed budget and expenditures shall be  
36 apportioned equally between the states.

1 e. The commission shall keep accurate accounts of all receipts and  
2 disbursements. The receipts and disbursements of the commission shall  
3 be subject to the audit and accounting procedures established under its  
4 bylaws. However, all receipts and disbursements of funds handled by  
5 the commission shall be audited yearly by the appropriate state  
6 auditing official and the report of the audit shall be included in and  
7 become a part of the annual report of the commission.

8 f. The accounts of the commission shall be open at any reasonable  
9 time for inspection by the public.

10 ARTICLE VI  
11 SEVERABILITY

12 If any provision of this compact, or its application to any person  
13 or circumstance, is held to be invalid, all other provisions of this  
14 compact, and the application of all of its provisions to all other  
15 persons and circumstances, shall remain valid, and to this end the  
16 provisions of this compact are severable.

17 NEW SECTION. **Sec. 3.** (1) Upon the passage of this act by the  
18 legislature, the secretary of state shall send a letter to the congress  
19 of the United States, and to the legislature of the State of Oregon.  
20 The content of the letter will provide notice of the passage of this  
21 bill, indicating that it is the wish of the State of Washington to  
22 amend the Columbia River Gorge Compact.

23 (2) The secretary of state shall request notice from the  
24 legislature of the State of Oregon and from the congress of the United  
25 States, regarding the passage of this measure in each body. Upon  
26 receipt of notice from each body, the secretary of state shall inform  
27 the legislature of the state.

28 NEW SECTION. **Sec. 4.** (1) The provisions of this act shall not  
29 take effect until such time as the proposed amendment to the Columbia  
30 River Gorge National Scenic Area Act in section 2 of this act is  
31 approved by the legislature of the State of Oregon and the congress of  
32 the United States.

1           (2) The date upon which notice is received from either the State of  
2 Oregon or the congress of the United States, whichever is later, shall  
3 serve as the effective date of this act.

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