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SECOND SUBSTITUTE HOUSE BILL 1835

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State of Washington

57th Legislature

2001 Regular Session

By House Committee on Finance (originally sponsored by Representatives Doumit, Sump, Schoesler and Clements)

Read first time 03/08/2001. Referred to Committee on .

1 AN ACT Relating to a forest products commission; amending RCW  
2 42.17.31907 and 43.135.055; adding a new section to chapter 82.32 RCW;  
3 and adding a new chapter to Title 15 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the creation of  
6 a forest products commission would assist in expanding the state's  
7 economy, because:

8 (1) Marketing is a dynamic and changing part of the Washington  
9 forest products industry and a vital element in expanding the state  
10 economy;

11 (2) The sale in the state and export to other states and abroad of  
12 forest products made in the state contribute substantial benefits to  
13 the economy of the state, provide a large number of jobs and sizeable  
14 tax revenues, and are key components of the health of many local  
15 communities because many secondary businesses are largely dependent on  
16 the health of the forest products industry; and

17 (3) Forest products are made from a renewable resource and are more  
18 environmentally sound than many alternative products.

1        NEW SECTION.        **Sec. 2.**        Unless the context clearly requires  
2 otherwise, the definitions in this section apply throughout this  
3 chapter.

4        (1) "Commission" means the forest products commission.

5        (2) "Department" means the department of agriculture.

6        (3) "Director" means the director of the department of agriculture  
7 or the director's authorized representative.

8        (4) "Forest products" or "timber" means trees of any species  
9 maintained for eventual harvest whether planted or of natural growth,  
10 standing or down, on privately or publicly owned land, and also  
11 includes wood products related thereto, but does not include Christmas  
12 trees or other trees on which the timber excise tax provided under  
13 chapter 84.33 RCW is not imposed.

14        (5) "Person" includes any individual, corporation, firm,  
15 partnership, trust, association, or any other organization of  
16 individuals.

17        (6) "Producer" means any person who harvests timber in Washington  
18 state and pays the timber excise tax imposed under chapter 84.33 RCW on  
19 at least two million board feet in a calendar year or in four  
20 consecutive calendar quarters.

21        (7) "Eastern Washington" means that portion of the state lying east  
22 of the Cascade mountain range.

23        (8) "Western Washington" means that portion of the state lying west  
24 of the Cascade mountain range.

25        NEW SECTION.        **Sec. 3.**        (1)(a) There is created a commodity  
26 commission to be known and designated as the Washington forest products  
27 commission. The commission is composed of nine voting members. The  
28 commission may, in its sole discretion, add or remove nonvoting ex  
29 officio members to the commission. Of the members, six shall be from  
30 western Washington, and three shall be from eastern Washington. After  
31 the initial election of commission members, however, if a position  
32 cannot be filled by a member from eastern Washington within sixty days  
33 from the date on which nominations may first be received because of a  
34 lack of candidates, the position may be filled by a member from western  
35 Washington. Under no circumstances will there be less than two board  
36 members from eastern Washington. If a position was filled by a member  
37 from western Washington because of a lack of candidates from eastern  
38 Washington, and districts are not used for the nomination and election

1 of members, then a person from eastern Washington must fill the next  
2 available vacancy or open position at the next election to bring the  
3 number of representatives from eastern Washington up to three members.  
4 All members shall be elected by the entire group of producers unless  
5 the commission creates districts for the members as authorized in  
6 section 5 of this act. If districts are used for the nomination and  
7 election of commission members, and it does not appear that one of the  
8 positions from eastern Washington will be filled because of a lack of  
9 candidates, then a commission member who resides in western Washington  
10 must be elected by the entire group of producers as an at-large member.  
11 The position of the western Washington member who is elected as an at-  
12 large member shall be filled by a member from eastern Washington at the  
13 expiration of the term of the at-large member. If districts are not  
14 used for the nomination and election of members, the commission shall  
15 strive to achieve representation on the commission from the different  
16 geographic regions of the state.

17 (b) Of the six members from western Washington, three members must  
18 have annual harvests of more than seventy-five million board feet, and  
19 three members must have annual harvests between two million board feet  
20 and seventy-five million board feet.

21 (c) Of the two members from eastern Washington, one member must  
22 have an annual harvest greater than forty million board feet, and one  
23 member must have an annual harvest between two million board feet and  
24 forty million board feet. If there is a third member from eastern  
25 Washington, the only harvest requirement is that the member have an  
26 annual harvest of at least two million board feet.

27 (2) The members must be citizens and residents of this state, and  
28 over the age of twenty-one years. Each member must currently, and for  
29 the five years last preceding his or her election, be actually engaged  
30 in producing forest products within the state of Washington, either  
31 individually or as an officer of a corporation, firm, partnership,  
32 trust, association, or business organization at the level of production  
33 required to qualify as a producer. Each member must also derive a  
34 substantial amount of his or her income from the production of forest  
35 products. The qualifications set forth in this section apply  
36 throughout each member's term of office.

37 (3) No more than one member of the commission may be employed by,  
38 or connected in a proprietary capacity with, the same corporation,  
39 firm, partnership, trust, association, or business organization.

1 (4) Five voting members of the commission constitute a quorum for  
2 the transaction of all business and the carrying out of the duties of  
3 the commission.

4 (5) The regular term of office of the members is four years from  
5 November 1st following their election and until their successors are  
6 elected and qualified. However, the first terms of the members elected  
7 November 1, 2001, is as follows: Positions one, four, and seven  
8 terminate November 1, 2003; positions two, five, and eight terminate  
9 November 1, 2004; and positions three, six, and nine terminate November  
10 1, 2005.

11 NEW SECTION. **Sec. 4.** (1) The director shall call the initial  
12 meeting of producers of forest products for the purpose of nominating  
13 their respective members of the commission. Public notice of the  
14 meeting shall be given by the director in the manner the director  
15 determines is appropriate. A producer may on his or her own motion  
16 file his or her name with the director for the purpose of receiving  
17 notice of the meeting. The nonreceipt of the notice by any interested  
18 person does not invalidate the proceedings.

19 (2) Prior to the nomination of commission members, the department  
20 of revenue shall provide the director with a list of all qualified  
21 producers within the state based upon tax records of the department.

22 (3) For the initial election of commission members, any qualified  
23 producer may be nominated orally for a commissioner position at the  
24 meeting convened by the director. Nominations may also be made within  
25 five days prior to the meeting by a written petition filed with the  
26 department, signed by at least five producers who reside in the state.  
27 If the director determines that one of the positions from eastern  
28 Washington will go unfilled because of a lack of candidates, the  
29 director shall announce that this position shall be filled by a member  
30 from western Washington. If the position designated for eastern  
31 Washington is filled by a member from western Washington because of a  
32 lack of candidates from eastern Washington, this position shall be  
33 designated as position number seven by the director for purposes of  
34 section 3(5) of this act. Under no circumstances will there be less  
35 than two board members from eastern Washington.

36 (4) The initial members of the commission shall be elected by  
37 secret mail ballot under the supervision of the director at the same  
38 time the referendum is submitted under section 12 of this act calling

1 for the creation of the commission and the imposition of the initial  
2 assessment. If a nominee does not receive a majority of the votes on  
3 the first ballot, a run-off election shall be held by mail in a similar  
4 manner between the two candidates for the position receiving the  
5 largest number of votes.

6 NEW SECTION. **Sec. 5.** (1) After the initial election of commission  
7 members, the commission shall establish rules for electing commission  
8 members, including the method used for notification, nominating, and  
9 voting. The commission may create commission districts and boundaries,  
10 and may also establish a weighted voting procedure for election of  
11 commission members. The commission shall hold its annual meeting  
12 during the month of October each year for the purpose of nominating  
13 commission members and the transaction of other business. Public  
14 notice of the meeting shall be given by the commission in the manner it  
15 determines is appropriate. A producer may on his or her own motion  
16 file his or her name with the commission for the purpose of receiving  
17 notice of the meeting. The nonreceipt of the notice by any interested  
18 person does not invalidate the proceedings.

19 (2) Prior to the nomination of commission members, the department  
20 of revenue shall provide the commission with a list of all qualified  
21 producers within the state based upon tax records of the department.

22 NEW SECTION. **Sec. 6.** (1) In the event a position becomes vacant  
23 due to resignation, disqualification, death, or for any other reason,  
24 the position until the next annual meeting shall be filled by vote of  
25 the remaining members of the commission. At the annual meeting a  
26 commissioner shall be elected to fill the balance of the unexpired  
27 term.

28 (2) Each member of the commission shall be compensated in  
29 accordance with RCW 43.03.230 and shall be reimbursed for actual travel  
30 expenses incurred in carrying out the provisions of this chapter.  
31 Employees of the commission may also be reimbursed for actual travel  
32 expenses when on official commission business.

33 NEW SECTION. **Sec. 7.** Obligations incurred by the commission and  
34 liabilities or claims against the commission may be enforced only  
35 against the assets of the commission in the same manner as if it were  
36 a corporation and no liability for the debts or actions of the

1 commission exists against either the state of Washington or any  
2 subdivision or instrumentality thereof or against any member, officer,  
3 employee, or agent of the commission in his or her individual capacity.  
4 The members of the commission, including employees of the commission,  
5 may not be held responsible individually or any way whatsoever to any  
6 person for errors in judgment, mistakes, or other acts, either of  
7 commission or omission, as principal, agent, person, or employees,  
8 except for their own individual acts of dishonesty or crime. A person  
9 or employee may not be held responsible individually for any act or  
10 omission of any other members of the commission.

11 NEW SECTION. **Sec. 8.** The powers and duties of the commission  
12 include:

13 (1) To elect a chairman and such officers as the commission deems  
14 advisable. The commission shall adopt rules for its own governance,  
15 which provide for the holding of an annual meeting for the election of  
16 officers and transaction of other business and for such other meetings  
17 as the commission may direct;

18 (2) To adopt any rules necessary to carry out the purposes of this  
19 chapter, in conformance with chapter 34.05 RCW;

20 (3) To administer and do all things reasonably necessary to carry  
21 out the purposes of this chapter;

22 (4) At the pleasure of the commission, to employ a treasurer who is  
23 responsible for all receipts and disbursements by the commission and  
24 the faithful discharge of whose duties shall be guaranteed by a bond at  
25 the sole expense of the commission;

26 (5) At the pleasure of the commission, to employ and discharge  
27 managers, secretaries, agents, attorneys, and employees and to engage  
28 the services of independent contractors as the commission deems  
29 necessary, to prescribe their duties, and to fix their compensation;

30 (6) To engage directly or indirectly in the promotion of Washington  
31 forest products and managed forests, and shall in the good faith  
32 judgment of the commission be in aid of the marketing, advertising, or  
33 sale of forest products, or of research related to such marketing,  
34 advertising, or sale of forest products, or of research related to  
35 managed forests;

36 (7) To enforce the provisions of this chapter, including  
37 investigating and prosecuting violations of this chapter;

1 (8) To acquire and transfer personal and real property, establish  
2 offices, incur expense, and enter into contracts. Contracts for  
3 creation and printing of promotional literature are not subject to  
4 chapter 43.78 RCW, but such contracts may be canceled by the commission  
5 unless performed under conditions of employment which substantially  
6 conform to the laws of this state and the rules of the department of  
7 labor and industries. The commission may create such debt and other  
8 liabilities as may be reasonable for proper discharge of its duties  
9 under this chapter;

10 (9) To maintain such account or accounts with one or more qualified  
11 public depositaries as the commission may direct, to cause moneys to be  
12 deposited therein, and to expend moneys for purposes authorized by this  
13 chapter by drafts made by the commission upon such institutions or by  
14 other means;

15 (10) To cause to be kept and annually closed, in accordance with  
16 generally accepted accounting principles, accurate records of all  
17 receipts, disbursements, and other financial transactions, available  
18 for audit by the state auditor;

19 (11) To create and maintain a list of producers and to disseminate  
20 information among and solicit the opinions of producers with respect to  
21 the discharge of the duties of the commission, directly or by  
22 arrangement with trade associations or other instrumentalities;

23 (12) To employ, designate as agent, act in concert with, and enter  
24 into contracts with any person, council, commission, or other entity  
25 for the purpose of promoting the general welfare of the forest products  
26 industry and particularly for the purpose of assisting in the sale and  
27 distribution of Washington forest products in domestic and foreign  
28 commerce, expending moneys as it may deem necessary or advisable for  
29 such purpose and for the purpose of paying its proportionate share of  
30 the cost of any program providing direct or indirect assistance to the  
31 sale and distribution of Washington forest products in domestic or  
32 foreign commerce, and employing and paying for vendors of professional  
33 services of all kinds;

34 (13) To sue and be sued as a commission, without individual  
35 liability for acts of the commission within the scope of the powers  
36 conferred upon it by this chapter;

37 (14) To propose assessment levels for producers subject to  
38 referendum approval under section 11 of this act; and

1 (15) To participate in federal and state agency hearings, meetings,  
2 and other proceedings relating to the regulation, production,  
3 manufacture, distribution, sale, or use of forest products.

4 NEW SECTION. **Sec. 9.** The commission shall create, provide for,  
5 and conduct a research, promotional, and educational campaign as sales  
6 and market conditions reasonably require. It shall investigate and  
7 ascertain the needs of producers, conditions of markets, and degree of  
8 public awareness of products, and take into account the information  
9 obtained in the discharge of its duties under this chapter.

10 NEW SECTION. **Sec. 10.** (1) The commission shall cause a list to be  
11 prepared of all Washington producers of forest products from any  
12 information available from the commission, producers' association, or  
13 producers, including tax records from the department of revenue. This  
14 list shall contain the names and addresses of all persons who produce  
15 forest products within this state and the amount of forest products  
16 produced during the period designated by the commission. A qualified  
17 person may, at any time, have his or her name placed upon the list by  
18 delivering or mailing the information to the commission. This list  
19 shall be corrected and brought up to date in accordance with evidence  
20 and information available to the commission on or before December 31st  
21 of each year, or as soon thereafter as possible. For all purposes of  
22 giving notice and holding referendums, the list on hand, corrected up  
23 to the day next preceding the date for issuing notices or ballots as  
24 the case may be, is, for purposes of this chapter, the list of all  
25 producers entitled to notice or to assent or dissent or to vote.

26 (2) The commission shall develop a reporting system to document  
27 that the producers of forest products in this state are reporting  
28 quantities of forest products produced and subject to the assessment as  
29 provided in section 11 of this act.

30 (3) The department of revenue may charge the commission for the  
31 reasonable costs of providing reports of harvest activity on a  
32 quarterly basis.

33 (4) Any taxpayer information received by the commission from the  
34 department of revenue may only be used for the limited purposes of  
35 establishing lists of producers necessary to determine eligibility for  
36 voting, eligibility for serving as a commission member, the amount of  
37 assessments owed, or other necessary purposes as established by law.



1        NEW SECTION.    **Sec. 11.**    (1) To provide for permanent funding of the  
2 forest products commission, an assessment shall be levied by the  
3 commission on producers of each species of forest products. The  
4 initial rate of assessment that shall be submitted for approval by  
5 referendum pursuant to section 12 of this act is fifty-seven cents per  
6 thousand board feet. The initial assessment is not effective until  
7 approved by a majority of producers as required by section 12 of this  
8 act.

9        (2) After the initial assessment rate is approved, the commission  
10 may adjust the amount of the assessment within a range of forty-five  
11 cents up to ninety cents per thousand board feet. The commission shall  
12 submit any proposed increase in the assessment to producers pursuant to  
13 the referendum process established in this section, and shall supply  
14 all known producers with a ballot for the referendum. The commission  
15 shall establish the assessment for the marketing year by January 1st of  
16 each year, or as soon thereafter as possible. Assessments may only be  
17 used for the purposes and objects of this chapter.

18        (3) The forest products commission may raise the assessment on  
19 forest products in excess of the fiscal growth factor under chapter  
20 43.135 RCW. The assessment limits established by this section are  
21 solely to provide prior legislative authority for the purposes of RCW  
22 43.135.055 and are not a limit on the authority of the forest products  
23 commission to alter assessments in any manner not limited by RCW  
24 43.135.055. However, any alteration in assessments made under this  
25 section must be made with the procedural requirements established by  
26 this chapter for altering such assessments.

27        (4) The requirement for approval of an assessment is met if: (a)  
28 At least fifty-one percent by numbers of producers replying in the  
29 referendum vote affirmatively, and these producers represent at least  
30 sixty-one percent of the volume of the producers replying in the  
31 referendum; or (b) sixty-five percent by numbers of producers replying  
32 in the referendum vote affirmatively, and these producers represent at  
33 least fifty-one percent of the volume of the producers replying in the  
34 referendum. An assessment shall only be approved if at least forty  
35 percent of the eligible producers participate in the vote.

36        NEW SECTION.    **Sec. 12.**    (1) For purposes of determining producer  
37 participation in the commission, the initial election of commissioners,  
38 and for imposition of the original assessment specified in section 11

1 of this act, the director shall conduct a referendum among all  
2 producers of forest products within the state.

3 (2) The requirement for approval of the assessment and creation of  
4 the commission is met if: (a) At least fifty-one percent by numbers of  
5 producers replying in the referendum vote affirmatively, and these  
6 producers represent at least sixty-one percent of the volume of the  
7 producers replying in the referendum; or (b) sixty-five percent by  
8 numbers of producers replying in the referendum vote affirmatively, and  
9 these producers represent at least fifty-one percent of the volume of  
10 the producers replying in the referendum. The referendum shall only be  
11 approved if at least forty percent of the eligible producers  
12 participate in the vote.

13 (3) If the director determines that the requisite approval has been  
14 given, the director shall declare the establishment of the commission  
15 and direct it to put into force the assessment authorized in section 11  
16 of this act. If the director finds that the requisite approval has not  
17 been given, then this chapter is not operative.

18 NEW SECTION. **Sec. 13.** The commission shall deposit moneys  
19 collected under section 11 of this act in a separate account in the  
20 name of the commission in any bank that is a state depository. All  
21 expenditures and disbursements made from this account under this  
22 chapter may be made without the necessity of a specific legislative  
23 appropriation. RCW 43.01.050 does not apply to this account or to the  
24 moneys received, collected, or expended under this chapter.

25 NEW SECTION. **Sec. 14.** A due and payable assessment levied in the  
26 amount determined by the commission under section 11 of this act  
27 constitutes a personal debt of every person so assessed, or who  
28 otherwise owes the assessment, and the assessment is due and payable to  
29 the commission when payment is called for by the commission. If a  
30 person fails to pay the commission the full amount of the assessment by  
31 the date due, the commission may add to the unpaid assessment an amount  
32 not exceeding ten percent of the assessment to defray the cost of  
33 enforcing its collection. If the person fails to pay any due and  
34 payable assessment or other such sum, the commission may bring a civil  
35 action for collection against the person or persons in a court of  
36 competent jurisdiction. The action shall be tried and judgment  
37 rendered as in any other cause of action for a debt due and payable.

1        NEW SECTION.    **Sec. 15.**    All county and state law enforcement  
2 officers shall assist in the enforcement of this chapter.

3        NEW SECTION.    **Sec. 16.**    The superior courts are hereby vested with  
4 jurisdiction to enforce this chapter and the rules of the commission,  
5 and to prevent and restrain violations thereof.

6        NEW SECTION.    **Sec. 17.**    This chapter shall be liberally construed  
7 to effectuate its purposes.

8        **Sec. 18.**    RCW 42.17.31907 and 1996 c 80 s 3 are each amended to  
9 read as follows:

10        The following agricultural business and commodity commission  
11 records are exempt from the disclosure requirements of this chapter:

12        (1) Production or sales records required to determine assessment  
13 levels and actual assessment payments to commodity commissions formed  
14 under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88,  
15 15.-- (sections 1 through 17 and 22 of this act), and 16.67 RCW or  
16 required by the department of agriculture under RCW 15.13.310(4) or  
17 15.49.370(6);

18        (2) Consignment information contained on phytosanitary certificates  
19 issued by the department of agriculture under chapters 15.13, 15.49,  
20 and 15.17 RCW or federal phytosanitary certificates issued under 7  
21 C.F.R. 353 through cooperative agreements with the animal and plant  
22 health inspection service, United States department of agriculture, or  
23 on applications for phytosanitary certification required by the  
24 department of agriculture; and

25        (3) Financial and commercial information and records supplied by  
26 persons to commodity commissions formed under chapters 15.24, 15.28,  
27 15.44, 15.65, 15.66, 15.74, 15.88, 15.-- (sections 1 through 17 and 22  
28 of this act), and 16.67 RCW with respect to domestic or export  
29 marketing activities or individual producer's production information.

30        **Sec. 19.**    RCW 43.135.055 and 1997 c 303 s 2 are each amended to  
31 read as follows:

32        (1) No fee may increase in any fiscal year by a percentage in  
33 excess of the fiscal growth factor for that fiscal year without prior  
34 legislative approval.

1 (2) This section does not apply to an assessment made by an  
2 agricultural commodity commission or board created by state statute or  
3 created under a marketing agreement or order under chapter 15.65 or  
4 15.66 RCW, or to the forest products commission, if the assessment is  
5 approved by referendum in accordance with the provisions of the  
6 statutes creating the commission or board or chapter 15.65 or 15.66 RCW  
7 for approving such assessments.

8 NEW SECTION. Sec. 20. A new section is added to chapter 82.32 RCW  
9 to read as follows:

10 The forest products commission, created pursuant to chapter 15.--  
11 RCW (sections 1 through 17 and 22 of this act), constitutes a state  
12 agency for purposes of applying the exemption contained in RCW  
13 82.32.330(3)(f) for the disclosure of taxpayer information by the  
14 department.

15 NEW SECTION. Sec. 21. Sections 1 through 17 and 22 of this act  
16 constitute a new chapter in Title 15 RCW.

17 NEW SECTION. Sec. 22. If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

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