
SUBSTITUTE SENATE BILL 5880

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Natural Resources, Parks & Shorelines
(originally sponsored by Senators Jacobsen, Oke, T. Sheldon, Morton,
Stevens and Rasmussen)

READ FIRST TIME 02/27/2001.

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 82.33 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 two shall be from eastern Washington. The
31 remaining member may reside in either western or eastern Washington.
32 All members shall be elected by the entire group of producers unless
33 the commission creates districts for the members as authorized in
34 section 5 of this act. If districts are used for the nomination and
35 election of commission members, the one commission member who may
36 reside in either western or eastern Washington must be elected by the
37 entire group of producers as an at large member.

1 (b) Of the six members from western Washington, three members must
2 have annual harvests of more than seventy-five million board feet, and
3 three members must have annual harvests between two million board feet
4 and seventy-five million board feet.

5 (c) Of the two members from eastern Washington, one member must
6 have an annual harvest greater than seventy-five million board feet,
7 and one member must have an annual harvest between two million board
8 feet and seventy-five million board feet.

9 (2) The members must be citizens and residents of this state, and
10 over the age of twenty-one years. Each member must currently, and for
11 the five years last preceding his or her election, be actually engaged
12 in producing forest products within the state of Washington, either
13 individually or as an officer of a corporation, firm, partnership,
14 trust, association, or business organization at the level of production
15 required to qualify as a producer. Each member must also derive a
16 substantial amount of his or her income from the production of forest
17 products. The qualifications set forth in this section apply
18 throughout each member's term of office.

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

22 (4) Five voting members of the commission constitute a quorum for
23 the transaction of all business and the carrying out of the duties of
24 the commission.

25 (5) The regular term of office of the members is four years from
26 November 1st following their election and until their successors are
27 elected and qualified. However, the first terms of the members elected
28 November 1, 2001, is as follows: Positions one, four, and seven
29 terminate November 1, 2003; positions two, five, and eight terminate
30 November 1, 2004; and positions three, six, and nine terminate November
31 1, 2005.

32 NEW SECTION. **Sec. 4.** (1) The director shall call the initial
33 meeting of producers of forest products for the purpose of nominating
34 their respective members of the commission. Public notice of the
35 meeting shall be given by the director in the manner the director
36 determines is appropriate. A producer may on his or her own motion
37 file his or her name with the director for the purpose of receiving

1 notice of the meeting. The nonreceipt of the notice by any interested
2 person does not invalidate the proceedings.

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

6 (3) For the initial election of commission members, any qualified
7 producer may be nominated orally for a commissioner position at the
8 meeting convened by the director. Nominations may also be made within
9 five days prior to the meeting by a written petition filed with the
10 department, signed by at least five producers who reside in the state.

11 (4) The initial members of the commission shall be elected by
12 secret mail ballot under the supervision of the director at the same
13 time the referendum is submitted under section 12 of this act calling
14 for the creation of the commission and the imposition of the initial
15 assessment. If a nominee does not receive a majority of the votes on
16 the first ballot, a run-off election shall be held by mail in a similar
17 manner between the two candidates for the position receiving the
18 largest number of votes.

19 NEW SECTION. **Sec. 5.** (1) After the initial election of commission
20 members, the commission shall establish rules for electing commission
21 members, including the method used for notification, nominating, and
22 voting. The commission may create commission districts and boundaries,
23 and may also establish a weighted voting procedure for election of
24 commission members. The commission shall hold its annual meeting
25 during the month of October each year for the purpose of nominating
26 commission members and the transaction of other business. Public
27 notice of the meeting shall be given by the commission in the manner it
28 determines is appropriate. A producer may on his or her own motion
29 file his or her name with the commission for the purpose of receiving
30 notice of the meeting. The nonreceipt of the notice by any interested
31 person does not invalidate the proceedings.

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

35 NEW SECTION. **Sec. 6.** (1) In the event a position becomes vacant
36 due to resignation, disqualification, death, or for any other reason,
37 the position until the next annual meeting shall be filled by vote of

1 the remaining members of the commission. At the annual meeting a
2 commissioner shall be elected to fill the balance of the unexpired
3 term.

4 (2) Each member of the commission shall be compensated in
5 accordance with RCW 43.03.230 and shall be reimbursed for actual travel
6 expenses incurred in carrying out the provisions of this chapter.
7 Employees of the commission may also be reimbursed for actual travel
8 expenses when on official commission business.

9 NEW SECTION. **Sec. 7.** Obligations incurred by the commission and
10 liabilities or claims against the commission may be enforced only
11 against the assets of the commission in the same manner as if it were
12 a corporation and no liability for the debts or actions of the
13 commission exists against either the state of Washington or any
14 subdivision or instrumentality thereof or against any member, officer,
15 employee, or agent of the commission in his or her individual capacity.
16 The members of the commission, including employees of the commission,
17 may not be held responsible individually or any way whatsoever to any
18 person for errors in judgment, mistakes, or other acts, either of
19 commission or omission, as principal, agent, person, or employees,
20 except for their own individual acts of dishonesty or crime. A person
21 or employee may not be held responsible individually for any act or
22 omission of any other members of the commission.

23 NEW SECTION. **Sec. 8.** The powers and duties of the commission
24 include:

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

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

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

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

1 (5) At the pleasure of the commission, to employ and discharge
2 managers, secretaries, agents, attorneys, and employees and to engage
3 the services of independent contractors as the commission deems
4 necessary, to prescribe their duties, and to fix their compensation;

5 (6) To engage directly or indirectly in the promotion of Washington
6 forest products and managed forests, and shall in the good faith
7 judgment of the commission be in aid of the marketing, advertising, or
8 sale of forest products, or of research related to such marketing,
9 advertising, or sale of forest products, or of research related to
10 managed forests;

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

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

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

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

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

35 (12) To employ, designate as agent, act in concert with, and enter
36 into contracts with any person, council, commission, or other entity
37 for the purpose of promoting the general welfare of the forest products
38 industry and particularly for the purpose of assisting in the sale and
39 distribution of Washington forest products in domestic and foreign

1 commerce, expending moneys as it may deem necessary or advisable for
2 such purpose and for the purpose of paying its proportionate share of
3 the cost of any program providing direct or indirect assistance to the
4 sale and distribution of Washington forest products in domestic or
5 foreign commerce, and employing and paying for vendors of professional
6 services of all kinds;

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

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

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

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

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

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

5 (3) The department of revenue may charge the commission for the
6 reasonable costs of providing reports of harvest activity on a
7 quarterly basis.

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

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

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

30 (3) The forest products commission may raise the assessment on
31 forest products in excess of the fiscal growth factor under chapter
32 43.135 RCW. The assessment limits established by this section are
33 solely to provide prior legislative authority for the purposes of RCW
34 43.135.055 and are not a limit on the authority of the forest products
35 commission to alter assessments in any manner not limited by RCW
36 43.135.055. However, any alteration in assessments made under this
37 section must be made with the procedural requirements established by
38 this chapter for altering such assessments.

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

10 NEW SECTION. **Sec. 12.** (1) For purposes of determining producer
11 participation in the commission, the initial election of commissioners,
12 and for imposition of the original assessment specified in section 11
13 of this act, the director shall conduct a referendum among all
14 producers of forest products within the state.

15 (2) The requirement for approval of the assessment and creation of
16 the commission is met if: (a) At least fifty-one percent by numbers of
17 producers replying in the referendum vote affirmatively, and these
18 producers represent at least sixty-one percent of the volume of the
19 producers replying in the referendum; or (b) sixty-five percent by
20 numbers of producers replying in the referendum vote affirmatively, and
21 these producers represent at least fifty-one percent of the volume of
22 the producers replying in the referendum. The referendum shall only be
23 approved if at least forty percent of the eligible producers
24 participate in the vote.

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

30 NEW SECTION. **Sec. 13.** The commission shall deposit moneys
31 collected under section 11 of this act in a separate account in the
32 name of the commission in any bank that is a state depository. All
33 expenditures and disbursements made from this account under this
34 chapter may be made without the necessity of a specific legislative
35 appropriation. RCW 43.01.050 does not apply to this account or to the
36 moneys received, collected, or expended under this chapter.

1 NEW SECTION. **Sec. 14.** A due and payable assessment levied in the
2 amount determined by the commission under section 11 of this act
3 constitutes a personal debt of every person so assessed, or who
4 otherwise owes the assessment, and the assessment is due and payable to
5 the commission when payment is called for by the commission. If a
6 person fails to pay the commission the full amount of the assessment by
7 the date due, the commission may add to the unpaid assessment an amount
8 not exceeding ten percent of the assessment to defray the cost of
9 enforcing its collection. If the person fails to pay any due and
10 payable assessment or other such sum, the commission may bring a civil
11 action for collection against the person or persons in a court of
12 competent jurisdiction. The action shall be tried and judgment
13 rendered as in any other cause of action for a debt due and payable.

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

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

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

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

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

25 (1) Production or sales records required to determine assessment
26 levels and actual assessment payments to commodity commissions formed
27 under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88,
28 15.-- (sections 1 through 17 and 22 of this act), and 16.67 RCW or
29 required by the department of agriculture under RCW 15.13.310(4) or
30 15.49.370(6);

31 (2) Consignment information contained on phytosanitary certificates
32 issued by the department of agriculture under chapters 15.13, 15.49,
33 and 15.17 RCW or federal phytosanitary certificates issued under 7
34 C.F.R. 353 through cooperative agreements with the animal and plant
35 health inspection service, United States department of agriculture, or

1 on applications for phytosanitary certification required by the
2 department of agriculture; and

3 (3) Financial and commercial information and records supplied by
4 persons to commodity commissions formed under chapters 15.24, 15.28,
5 15.44, 15.65, 15.66, 15.74, 15.88, 15.-- (sections 1 through 17 and 22
6 of this act), and 16.67 RCW with respect to domestic or export
7 marketing activities or individual producer's production information.

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

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

13 (2) This section does not apply to an assessment made by an
14 agricultural commodity commission or board created by state statute or
15 created under a marketing agreement or order under chapter 15.65 or
16 15.66 RCW, or to the forest products commission, if the assessment is
17 approved by referendum in accordance with the provisions of the
18 statutes creating the commission or board or chapter 15.65 or 15.66 RCW
19 for approving such assessments.

20 NEW SECTION. **Sec. 20.** A new section is added to chapter 82.33 RCW
21 to read as follows:

22 The forest products commission, created pursuant to chapter 15.--
23 RCW (sections 1 through 17 and 22 of this act), constitutes a state
24 agency for purposes of applying the exemption contained in RCW
25 82.32.330(3)(f) for the disclosure of taxpayer information by the
26 department.

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

29 NEW SECTION. **Sec. 22.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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