
SENATE BILL 5880

State of Washington

57th Legislature

2001 Regular Session

By Senators Jacobsen, Oke, T. Sheldon, Morton, Stevens and Rasmussen

Read first time 02/06/2001. Referred to Committee on Natural Resources, Parks & Shorelines.

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

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

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

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

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

16 (3) Forest products are made from a renewable resource and are more
17 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 involved in the growing and
18 harvesting of timber in Washington state. A "producer" does not
19 include any person who harvests less than two million board feet of
20 timber from Washington state for four consecutive quarters, as
21 evidenced by payment of the timber excise tax imposed under chapter
22 84.33 RCW.

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

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

27 NEW SECTION. **Sec. 3.** (1)(a) There is created a commodity
28 commission to be known and designated as the Washington forest products
29 commission. The commission is composed of nine voting members. The
30 commission may, in its sole discretion, add or remove nonvoting ex
31 officio members to the commission. Of the members, six shall be from
32 western Washington, and two shall be from eastern Washington. The
33 remaining member may reside in either western or eastern Washington.
34 All members shall be elected by the entire group of producers unless
35 the commission creates districts for the members as authorized in
36 section 5 of this act. If districts are used for the nomination and
37 election of commission members, the one commission member who may

1 reside in either western or eastern Washington must be elected by the
2 entire group of producers as an at large member.

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

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

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

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

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

27 (5) The regular term of office of the members is four years from
28 November 1st following their election and until their successors are
29 elected and qualified. However, the first terms of the members elected
30 November 1, 2001, is as follows: Positions one, four, and seven
31 terminate November 1, 2003; positions two, five, and eight terminate
32 November 1, 2004; and positions three, six, and nine terminate November
33 1, 2005.

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

1 file his or her name with the director for the purpose of receiving
2 notice of the meeting. The nonreceipt of the notice by any interested
3 person does not invalidate the proceedings.

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

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

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

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

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

36 NEW SECTION. **Sec. 6.** (1) In the event a position becomes vacant
37 due to resignation, disqualification, death, or for any other reason,

1 the position until the next annual meeting shall be filled by vote of
2 the remaining members of the commission. At the annual meeting a
3 commissioner shall be elected to fill the balance of the unexpired
4 term.

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

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

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

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

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

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

35 (4) At the pleasure of the commission, to employ a treasurer who is
36 responsible for all receipts and disbursements by the commission and

1 the faithful discharge of whose duties shall be guaranteed by a bond at
2 the sole expense of the commission;

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

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

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

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

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

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

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

37 (12) To employ, designate as agent, act in concert with, and enter
38 into contracts with any person, council, commission, or other entity
39 for the purpose of promoting the general welfare of the forest products

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

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

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

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

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

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

1 purposes of this chapter, the list of all producers entitled to notice
2 or to assent or dissent or to vote.

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

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

15 (2) After the initial assessment rate is approved, the commission
16 may adjust the amount of the assessment within a range of forty-five
17 cents up to ninety cents per thousand board feet. The commission shall
18 submit any proposed increase in the assessment to producers pursuant to
19 the referendum process established in this section, and shall supply
20 all known producers with a ballot for the referendum. The commission
21 shall establish the assessment for the marketing year no later than
22 January 1st of each year, or as soon thereafter as possible.
23 Assessments may only be used for the purposes and objects of this
24 chapter.

25 (3) The forest products commission may raise the assessment on
26 forest products in excess of the fiscal growth factor under chapter
27 43.135 RCW. The assessment limits established by this section are
28 solely to provide prior legislative authority for the purposes of RCW
29 43.135.055 and are not a limit on the authority of the forest products
30 commission to alter assessments in any manner not limited by RCW
31 43.135.055. However, any alteration in assessments made under this
32 section must be made with the procedural requirements established by
33 this chapter for altering such assessments.

34 (4) The requirement for approval of an assessment is met if: (a)
35 At least fifty-one percent by numbers of producers replying in the
36 referendum vote affirmatively, and these producers represent at least
37 sixty-one percent of the volume of the producers replying in the
38 referendum; or (b) sixty-five percent by numbers of producers replying

1 in the referendum vote affirmatively, and these producers represent at
2 least fifty-one percent of the volume of the producers replying in the
3 referendum. An assessment shall only be approved if at least forty
4 percent of the eligible producers participate in the vote.

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

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

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

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

32 NEW SECTION. **Sec. 14.** A due and payable assessment levied in the
33 amount determined by the commission under section 11 of this act
34 constitutes a personal debt of every person so assessed, or who
35 otherwise owes the assessment, and the assessment is due and payable to
36 the commission when payment is called for by the commission. If a

1 person fails to pay the commission the full amount of the assessment by
2 the date due, the commission may add to the unpaid assessment an amount
3 not exceeding ten percent of the assessment to defray the cost of
4 enforcing its collection. If the person fails to pay any due and
5 payable assessment or other such sum, the commission may bring a civil
6 action for collection against the person or persons in a court of
7 competent jurisdiction. The action shall be tried and judgment
8 rendered as in any other cause of action for a debt due and payable.

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

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

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

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

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

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

25 (2) Consignment information contained on phytosanitary certificates
26 issued by the department of agriculture under chapters 15.13, 15.49,
27 and 15.17 RCW or federal phytosanitary certificates issued under 7
28 C.F.R. 353 through cooperative agreements with the animal and plant
29 health inspection service, United States department of agriculture, or
30 on applications for phytosanitary certification required by the
31 department of agriculture; and

32 (3) Financial and commercial information and records supplied by
33 persons to commodity commissions formed under chapters 15.24, 15.28,
34 15.44, 15.65, 15.66, 15.74, 15.88, 15.-- (sections 1 through 17 of this

1 act), and 16.67 RCW with respect to domestic or export marketing
2 activities or individual producer's production information.

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

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

8 (2) This section does not apply to an assessment made by an
9 agricultural commodity commission or board created by state statute or
10 created under a marketing agreement or order under chapter 15.65 or
11 15.66 RCW, or to the forest products commission, if the assessment is
12 approved by referendum in accordance with the provisions of the
13 statutes creating the commission or board or chapter 15.65 or 15.66 RCW
14 for approving such assessments.

15 NEW SECTION. **Sec. 20.** Sections 1 through 17 and 21 of this act
16 constitute a new chapter in Title 15 RCW.

17 NEW SECTION. **Sec. 21.** 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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