

---

HOUSE BILL 1642

---

State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives McCune, Angel, Rolfes, and Kretz

Read first time 01/27/11. Referred to Committee on Agriculture & Natural Resources.

1            AN ACT Relating to investing in the economy of the state of  
2 Washington by creating a mechanism to enhance the production of Pacific  
3 salmon; amending RCW 77.12.459 and 42.56.380; and adding a new chapter  
4 to Title 15 RCW.

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

6            NEW SECTION.    **Sec. 1.**    The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8            (1) "Assessment-qualifying catch" means all salmon caught in Puget  
9 Sound under a commercial license issued by the department of fish and  
10 wildlife.

11           (2) "Commission" means the Puget Sound commercial salmon  
12 commission.

13           (3) "Department" means the department of agriculture.

14           (4) "Director" means the director of the department or the  
15 director's duly authorized representative.

16           (5) "Fiscal year" means the twelve-month period beginning with  
17 January 1st of any year and ending December 31st.

18           (6) "Harvester" means any person or other entity licensed under

1 Title 77 RCW to commercially harvest or receive salmon that is  
2 harvested in Puget Sound.

3 (7) "Puget Sound" has the same meaning as defined in RCW 90.71.010.

4 (8) "Referendum" means a vote by affected producers that is  
5 conducted by secret ballot.

6 (9) "Salmon" means all species of Pacific salmon, other than  
7 steelhead, from both wild stock or hatchery origins.

8 NEW SECTION. **Sec. 2.** (1) Subject to the referendum conducted  
9 under section 3 of this act, there is created a commodity commission,  
10 to be known as the Puget Sound commercial salmon commission. The  
11 commission is comprised of seven voting members; five members must be  
12 commercial harvesters, one member must be a processor, and one voting  
13 member must be the director.

14 (2) Five voting members of the commission constitute a quorum for  
15 the transaction of any commission business.

16 (3) Each harvester member and the processor member must be a  
17 citizen and resident of this state and over the age of twenty-one.  
18 Harvester members must have a license issued under Title 77 RCW to  
19 commercially harvest salmon in Puget Sound. Of the five commercial  
20 harvesters, two must be licensed to fish with a gill net, two must be  
21 licensed to fish with a purse seine, and one must be licensed to use a  
22 gear type other than a gill net or a purse seine.

23 (4) The harvester members serve three-year terms. Of the initial  
24 voting members, two members must be appointed for a one-year term, two  
25 members must be appointed for a two-year term, and two members must be  
26 appointed for a three-year term.

27 NEW SECTION. **Sec. 3.** (1) Upon receipt of a petition containing  
28 the signatures of fifteen commercial Puget Sound salmon harvesters  
29 asking the director to implement this chapter and to determine producer  
30 participation in the commission and assessment under this chapter, the  
31 director shall:

32 (a) Conduct a referendum of Puget Sound commercial salmon  
33 harvesters and processors. The requirements of assent or approval of  
34 the referendum are met if:

35 (i) At least fifty-one percent by numbers of affected harvesters  
36 and processors participating in the referendum vote affirmatively; and

1 (ii) Thirty percent of the affected harvesters and processors and  
2 thirty percent of the production have been represented in the  
3 referendum to determine assent or approval of participation and  
4 assessment. The referendum must be conducted within sixty days of  
5 receipt of the petition; and

6 (b) Establish a list of harvesters and processors from information  
7 provided by the department of fish and wildlife. In establishing a  
8 current list of harvesters and processors and their individual  
9 production, the director shall use the name, mailing address, and  
10 production recorded by the department of fish and wildlife in the  
11 preceding fiscal year. Information on each producer must be mailed to  
12 each harvester and processor on record with the director for  
13 verification. All corrections must be filed with the director within  
14 twenty days from the date of mailing. The list of affected harvesters  
15 and processors must be kept in a file by the director. The list must  
16 be certified as a true representation of the referendum mailing list.  
17 Inadvertent failure to notify an affected harvester or processor does  
18 not invalidate a proceeding conducted under this chapter. The director  
19 shall provide the commission the list of affected harvesters and  
20 processors after assent in a referendum as provided in this section.

21 (2) If the director determines that the requisite assent has been  
22 given in the referendum conducted under subsection (1) of this section,  
23 the director shall:

24 (a) Within sixty days after assent of the referendum held, appoint  
25 the members of the commission; and

26 (b) Direct the commission to put into force the assessment as  
27 provided for in section 10 of this act.

28 (3) If the director determines that the requisite assent has not  
29 been given in the referendum conducted under subsection (1) of this  
30 section, the director shall take no further action to implement or  
31 enforce this chapter.

32 (4) Upon completion of the referendum conducted under subsection  
33 (1) of this section, the department shall tally the results of the vote  
34 and provide the results to affected harvesters and processors. If an  
35 affected harvester or processor disputes the results of a vote, that  
36 producer within sixty days from the announced results, shall provide in  
37 writing a statement of why the vote is disputed and request a recount.

1 Once the vote is tallied and distributed, all disputes are resolved,  
2 and all matters in a vote are finalized, the individual ballots may be  
3 destroyed.

4 (5) Before conducting the referendum provided for in subsection (1)  
5 of this section, the director may require the petitioners to deposit  
6 with the department an amount of money as the director deems necessary  
7 to defray the expenses of conducting the referendum. The director  
8 shall provide the petitioners an estimate of expenses that may be  
9 incurred to conduct a referendum before any service takes place.  
10 Petitioners shall deposit funds with the director to pay for expenses  
11 incurred by the department. The commission shall reimburse petitioners  
12 the amount paid to the department when funds become available.  
13 However, if for any reason the referendum process is discontinued, the  
14 petitioners shall reimburse the department for expenses incurred by the  
15 department up until the time the process is discontinued.

16 (6) The director is not required to hold a referendum under  
17 subsection (1) of this section more than once in any twelve-month  
18 period.

19 NEW SECTION. **Sec. 4.** (1) The director shall appoint the harvester  
20 and processor members of the commission. In making appointments, no  
21 later than ninety days before an expiration of a commission member's  
22 term, the director shall call for recommendations for commission member  
23 positions, and the director shall take into consideration  
24 recommendations made by a trade association representing all Puget  
25 Sound commercial fishing interests. In appointing persons to the  
26 commission, the director shall seek a balanced representation on the  
27 commission that reflects the composition of the commercial salmon  
28 industry throughout the Puget Sound region.

29 (2) If a position on the commission becomes vacant due to  
30 resignation, disqualification, death, or for any other reason, the  
31 commission shall notify the director and the unexpired term must  
32 immediately be filled by appointment by the director.

33 (3) Each member or employee of the commission must be reimbursed  
34 for actual travel expenses incurred in carrying out this chapter as  
35 defined by the commission by rule. If not otherwise defined by rule,  
36 reimbursement for travel expenses must be at the rates allowed by RCW  
37 43.03.050 and 43.03.060.

1        NEW SECTION.    **Sec. 5.**    Obligations incurred by the commission and  
2 any other liabilities or claims against the commission may be enforced  
3 only against the assets of the commission and, except to the extent of  
4 such assets, no liability for the debts or actions of the commission  
5 exists against either the state of Washington or any subdivision or  
6 instrumentality thereof or against any member, employee, or agent of  
7 the commission or the state of Washington in his or her individual  
8 capacity.    Except as otherwise provided in this chapter, neither the  
9 commission members, nor its employees, may be held individually  
10 responsible for errors in judgment, mistakes, or other acts, either of  
11 commission or omission, as principal, agent, person, or employee,  
12 except for their own individual acts of dishonesty or crime.    No person  
13 or employee may be held individually responsible for any act or  
14 omission of any other commission members.    The liability of the  
15 commission members shall be several and not joint, and no member is  
16 liable for the default of any other member.    This provision confirms  
17 that commission members have been and continue to be, state officers or  
18 volunteers for purposes of RCW 4.92.075 and are entitled to the  
19 defenses, indemnifications, limitations of liability, and other  
20 protections and benefits of chapter 4.92 RCW.

21        NEW SECTION.    **Sec. 6.**    The commission shall:

22            (1) Elect a chair and officers.    The officers must include a  
23 treasurer who is responsible for all receipts and disbursements by the  
24 commission and the faithful discharge of whose duties must be  
25 guaranteed by a bond at the sole expense of the commission.    The  
26 commission must adopt rules for its own governance that provide for the  
27 holding of an annual meeting for the election of officers and the  
28 transaction of other business and for other meetings the commission may  
29 direct;

30            (2) Do all things reasonably necessary to effect the purposes of  
31 this chapter.    However, the commission has no rule-making power except  
32 as provided in this chapter;

33            (3) Employ and discharge managers, secretaries, agents, attorneys,  
34 and employees and engage the services of independent contractors;

35            (4) Retain, as necessary, the services of private legal counsel to  
36 conduct legal actions on behalf of the commission.    The retention of a

1 private attorney is subject to review by the office of the attorney  
2 general;

3 (5) Implement the salmon enhancement strategy directed in section  
4 10 of this act;

5 (6) Acquire and transfer personal and real property, establish  
6 offices, incur expenses, and enter into contracts, including contracts  
7 for the creation and printing of promotional literature. The contracts  
8 are not subject to chapter 43.78 RCW, and are cancelable by the  
9 commission unless performed under conditions of employment that  
10 substantially conform to the laws of this state and the rules of the  
11 department of labor and industries. The commission may create debt and  
12 other liabilities that are reasonable for proper discharge of its  
13 duties under this chapter;

14 (7) Maintain accounts with one or more qualified public  
15 depositories as the commission may direct, for the deposit of money,  
16 and expend money for purposes authorized by this chapter by drafts made  
17 by the commission upon such institutions or by other means;

18 (8) Cause to be kept and annually closed, in accordance with  
19 generally accepted accounting principles, accurate records of all  
20 receipts, disbursements, and other financial transactions, available  
21 for audit by the state auditor;

22 (9) Create and maintain a list of harvesters and processors and  
23 disseminate information among and solicit the opinions of producers  
24 with respect to the discharge of the duties of the commission, directly  
25 or by arrangement with trade associations or other instrumentalities;

26 (10) Sue and be sued as a commission, without individual liability  
27 for acts of the commission within the scope of the powers conferred  
28 upon it by this chapter; and

29 (11) Receive such gifts, grants, and endowments from public or  
30 private sources as may be made from time to time, in trust or  
31 otherwise, for the use and benefit of the purposes of the commission  
32 and expend the same or any income therefrom according to the terms of  
33 the gifts, grants, or endowments.

34 NEW SECTION. **Sec. 7.** (1) The commission shall develop and submit  
35 to the director for approval any plans, programs, and projects  
36 concerning the establishment, issuance, effectuation, and

1 administration programs appropriate for the commission related to  
2 salmon enhancement.

3 (2) The commission, before the beginning of its fiscal year, shall  
4 prepare and submit to the director for approval any plans and its  
5 budget on a fiscal period basis.

6 (3) The director shall strive to review and make a determination of  
7 all submissions described in this section in a timely manner.

8 NEW SECTION. **Sec. 8.** The commission exists primarily for the  
9 benefit of the people of the state of Washington and its economy. The  
10 legislature charges the commission, with oversight by the director, to  
11 engage in the activities outlined in this chapter.

12 NEW SECTION. **Sec. 9.** (1) The commission shall prepare a list of  
13 all affected harvesters and processors from information available from  
14 the department of fish and wildlife. This list must contain the names  
15 and addresses of affected harvesters and processors and the amount of  
16 salmon harvested or processed during the period designated by the  
17 commission. A qualified person may, at any time, have his or her name  
18 placed upon the list by delivering or mailing the information to the  
19 commission. This list must be corrected and brought up-to-date in  
20 accordance with evidence and information available to the commission by  
21 December 31st of each year. For the purposes of giving notice and  
22 holding referendums, the list updated before the date for issuing  
23 notices or ballots is the list of all harvesters and processors  
24 entitled to notice, to assent or dissent, or to vote. Inadvertent  
25 failure to notify a harvester or processor does not invalidate a  
26 proceeding conducted under this chapter.

27 (2) It is the responsibility of affected harvesters and processors  
28 to ensure that their correct address is filed with the commission. It  
29 is also the responsibility of affected harvesters and processors to  
30 submit production data to the commission as prescribed by this chapter.

31 (3) The commission shall develop a reporting system to document  
32 that the affected harvesters and processors in this state are reporting  
33 quantities of salmon harvested or processed and are paying the  
34 assessment as provided in section 10 of this act.

1        NEW SECTION.    **Sec. 10.**    (1) Pursuant to referendum in accordance  
2 with section 3 of this act, there is levied, and the commission shall  
3 collect, upon the harvest or processing of an assessment-qualifying  
4 catch, a Puget Sound salmon enhancement assessment.

5        (2) Except as otherwise provided in this section, the Puget Sound  
6 salmon enhancement assessment must be at least five percent of the  
7 value of the salmon at the point of landing.

8        (3)(a) In instances when the harvester sells an assessment-  
9 qualifying catch to a fish buyer licensed under RCW 77.65.280, the fish  
10 buyer is responsible for collecting the entire assessment. However, of  
11 the value collected, one-half must be contributed by the harvester of  
12 the salmon and one-half must be contributed by the fish buyer. The  
13 portion of the assessment contributed by the harvester must be  
14 separately accounted for by the fish buyer as a line item on the  
15 associated forms and may not be simply deducted from the price paid to  
16 the harvester.

17        (b) In instances when a harvester exports the harvester's  
18 assessment-qualifying catch outside of Washington, or otherwise sells  
19 his or her catch to a party that is not a licensed fish buyer under RCW  
20 77.65.280, the harvester is responsible for the entire Puget Sound  
21 salmon enhancement assessment.

22        (4) The commission shall adopt rules prescribing the time, place,  
23 and method for payment and collection of this assessment.

24        NEW SECTION.    **Sec. 11.**    (1)(a) The commission shall deposit money  
25 collected under section 10 of this act in a separate account in the  
26 name of the commission in any bank that is a state depository. All  
27 expenditures and disbursements made from this account under this  
28 chapter may be made without the necessity of a specific legislative  
29 appropriation. RCW 43.01.050 does not apply to this account or to the  
30 money received, collected, or expended as provided in this chapter.  
31 All money in the account must be used for either the operation of the  
32 commission or for salmon enhancement projects.

33        (b) In addition to receipts from the Puget Sound salmon enhancement  
34 assessment collected under section 10 of this act, the commission may  
35 solicit voluntary assessments donated by tribal fishers or other  
36 donations made for the purposes of salmon enhancement.



1 (2)(a) Salmon enhancement projects undertaken by the commission may  
2 include the operation of hatcheries and other projects designed to  
3 increase the production of Pacific salmon. Unless otherwise  
4 specifically authorized by the commission, all salmon enhancement  
5 projects funded through grants under this section must be located  
6 within Puget Sound.

7 (b) The authority to use commission money for the operation of  
8 hatcheries is to be interpreted broadly to include all activities that  
9 support the operation of Pacific salmon hatcheries. This includes the  
10 harvest of broodstock, the incubation of eggs, the rearing of smolts,  
11 the release of fry, and associated research and educational activities.  
12 All hatchery operation enhancement projects must be carried out by the  
13 commission consistent with all state laws relating to hatchery salmon  
14 production and release.

15 NEW SECTION. **Sec. 12.** An assessment levied in an amount  
16 determined by the commission under section 10 of this act constitutes  
17 a personal debt of every person assessed or who otherwise owes the  
18 assessment, and the assessment is due and payable to the commission  
19 when payment is called for by the commission. If a harvester or  
20 processor fails to pay the commission the full amount of the assessment  
21 by the date due, the commission may add to the unpaid assessment an  
22 amount not exceeding ten percent of the assessment to defray the cost  
23 of enforcing its collection. If the person fails to pay an assessment,  
24 the commission may bring a civil action for collection against the  
25 person or persons in a court of competent jurisdiction. The action  
26 shall be tried and judgment rendered as in any other cause of action  
27 for a debt due and payable.

28 NEW SECTION. **Sec. 13.** (1) Under RCW 42.56.380, certain business  
29 records, commission records, and department records relating to the  
30 commission and producers of commodities are exempt from public  
31 disclosure.

32 (2) Financial and commercial information and records submitted to  
33 either the department or the commission for the purpose of  
34 administering this chapter may be shared between the department and the  
35 commission. They may also be used, if required, in any suit or  
36 administrative hearing involving this chapter.

1 (3) This section does not prohibit:

2 (a) The issuance of general statements based upon the reports of  
3 persons subject to this chapter as long as the statements do not  
4 identify the information furnished by any person; or

5 (b) The publication by the director or the commission of the name  
6 of any person violating this chapter and a statement of the manner of  
7 the violation by that person.

8 NEW SECTION. **Sec. 14.** All costs incurred by the department,  
9 including the adoption of rules and other actions necessary to carry  
10 out this chapter, must be reimbursed by the commission. The commission  
11 shall provide funds to the department according to the rules adopted by  
12 the director.

13 NEW SECTION. **Sec. 15.** (1) Any prosecution brought under this  
14 chapter may be instituted in any county in which the defendant or any  
15 defendant resides, or in which the violation was committed, or in which  
16 the defendant or any defendant has his or her principal place of  
17 business.

18 (2) The superior courts may enforce this chapter and the rules and  
19 regulations of the commission issued hereunder, and may prevent and  
20 restrain violations thereof.

21 NEW SECTION. **Sec. 16.** This chapter shall be liberally construed  
22 to effectuate its purposes.

23 NEW SECTION. **Sec. 17.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act  
28 constitute a new chapter in Title 15 RCW.

29 **Sec. 19.** RCW 77.12.459 and 1998 c 190 s 74 are each amended to  
30 read as follows:

31 (1) Except as otherwise provided in this section, a person other  
32 than the United States, an Indian tribe recognized as such by the

1 federal government, the state, a subdivision of the state, or a  
2 municipal corporation or an agency of such a unit of government shall  
3 not release salmon or steelhead trout into the public waters of the  
4 state and subsequently to recapture and commercially harvest such  
5 salmon or trout.

6 (2) This section shall not prevent:

7 (a) Any person from rearing salmon or steelhead trout in pens or in  
8 a confined area under circumstances where the salmon or steelhead trout  
9 are confined and never permitted to swim freely in open water; or

10 (b) Any qualifying organization partnering with the department for  
11 salmon enhancement under section 9 of this act from operating a salmon  
12 hatchery and releasing salmon for subsequent recapture and commercial  
13 harvest under the authority of the department.

14 **Sec. 20.** RCW 42.56.380 and 2010 c 128 s 2 are each amended to read  
15 as follows:

16 The following information relating to agriculture and livestock is  
17 exempt from disclosure under this chapter:

18 (1) Business-related information under RCW 15.86.110;

19 (2) Information provided under RCW 15.54.362;

20 (3) Production or sales records required to determine assessment  
21 levels and actual assessment payments to commodity boards and  
22 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,  
23 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, 15.--- (the new chapter  
24 created in section 18 of this act), and 16.67 RCW or required by the  
25 department of agriculture to administer these chapters or the  
26 department's programs;

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

34 (5) Financial and commercial information and records supplied by  
35 persons (a) to the department of agriculture for the purpose of  
36 conducting a referendum for the potential establishment of a commodity  
37 board or commission; or (b) to the department of agriculture or

1 commodity boards or commissions formed under chapter 15.24, 15.28,  
2 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW  
3 with respect to domestic or export marketing activities or individual  
4 producer's production information;

5 (6) Information obtained regarding the purchases, sales, or  
6 production of an individual American ginseng grower or dealer, except  
7 for providing reports to the United States fish and wildlife service  
8 under RCW 15.19.080;

9 (7) Information collected regarding packers and shippers of fruits  
10 and vegetables for the issuance of certificates of compliance under RCW  
11 15.17.140(2) and 15.17.143;

12 (8) Financial statements obtained under RCW 16.65.030(1)(d) for the  
13 purposes of determining whether or not the applicant meets the minimum  
14 net worth requirements to construct or operate a public livestock  
15 market;

16 (9) Information submitted by an individual or business for the  
17 purpose of participating in a state or national animal identification  
18 system. Disclosure to local, state, and federal officials is not  
19 public disclosure. This exemption does not affect the disclosure of  
20 information used in reportable animal health investigations under  
21 chapter 16.36 RCW once they are complete; and

22 (10) Results of testing for animal diseases not required to be  
23 reported under chapter 16.36 RCW that is done at the request of the  
24 animal owner or his or her designee that can be identified to a  
25 particular business or individual.

--- END ---