

2 **2SHB 1835** - S COMM AMD

3 By Committee on Natural Resources, Parks & Shorelines

4 ADOPTED 04/06/01

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

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

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

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

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

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

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

1 (5) "Person" includes any individual, corporation, firm,
2 partnership, trust, association, or any other organization of
3 individuals.

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

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

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

12 NEW SECTION. **Sec. 3.** (1)(a) There is created a commodity
13 commission to be known and designated as the Washington forest products
14 commission. The commission is composed of nine voting members. The
15 commission may, in its sole discretion, add or remove nonvoting ex
16 officio members to the commission. Of the members, six shall be from
17 western Washington, and three shall be from eastern Washington. After
18 the initial election of commission members, however, if a position
19 cannot be filled by a member from eastern Washington within sixty days
20 from the date on which nominations may first be received because of a
21 lack of candidates, the position may be filled by a member from western
22 Washington. Under no circumstances will there be less than two board
23 members from eastern Washington. If a position was filled by a member
24 from western Washington because of a lack of candidates from eastern
25 Washington, and districts are not used for the nomination and election
26 of members, then a person from eastern Washington must fill the next
27 available vacancy or open position at the next election to bring the
28 number of representatives from eastern Washington up to three members.
29 All members shall be elected by the entire group of producers unless
30 the commission creates districts for the members as authorized in
31 section 5 of this act. If districts are used for the nomination and
32 election of commission members, and it does not appear that one of the
33 positions from eastern Washington will be filled because of a lack of
34 candidates, then a commission member who resides in western Washington
35 must be elected by the entire group of producers as an at-large member.
36 The position of the western Washington member who is elected as an at-
37 large member shall be filled by a member from eastern Washington at the
38 expiration of the term of the at-large member. If districts are not

1 used for the nomination and election of members, the commission shall
2 strive to achieve representation on the commission from the different
3 geographic regions of the state.

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

8 (c) Of the two members from eastern Washington, one member must
9 have an annual harvest greater than forty million board feet, and one
10 member must have an annual harvest between two million board feet and
11 forty million board feet. If there is a third member from eastern
12 Washington, the only harvest requirement is that the member have an
13 annual harvest of at least two million board feet.

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

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

27 (4) Five voting members of the commission constitute a quorum for
28 the transaction of all business and the carrying out of the duties of
29 the commission.

30 (5) The regular term of office of the members is four years from
31 November 1st following their election and until their successors are
32 elected and qualified. However, the first terms of the members elected
33 November 1, 2001, is as follows: Positions one, four, and seven
34 terminate November 1, 2003; positions two, five, and eight terminate
35 November 1, 2004; and positions three, six, and nine terminate November
36 1, 2005.

37 NEW SECTION. **Sec. 4.** (1) The director shall call the initial
38 meeting of producers of forest products for the purpose of nominating

1 their respective members of the commission. Public notice of the
2 meeting shall be given by the director in the manner the director
3 determines is appropriate. A producer may on his or her own motion
4 file his or her name with the director for the purpose of receiving
5 notice of the meeting. The nonreceipt of the notice by any interested
6 person does not invalidate the proceedings.

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

10 (3) For the initial election of commission members, any qualified
11 producer may be nominated orally for a commissioner position at the
12 meeting convened by the director. Nominations may also be made within
13 five days prior to the meeting by a written petition filed with the
14 department, signed by at least five producers who reside in the state.
15 If the director determines that one of the positions from eastern
16 Washington will go unfilled because of a lack of candidates, the
17 director shall announce that this position shall be filled by a member
18 from western Washington. If the position designated for eastern
19 Washington is filled by a member from western Washington because of a
20 lack of candidates from eastern Washington, this position shall be
21 designated as position number seven by the director for purposes of
22 section 3(5) of this act. Under no circumstances will there be less
23 than two board members from eastern Washington.

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

32 NEW SECTION. **Sec. 5.** (1) After the initial election of commission
33 members, the commission shall establish rules for electing commission
34 members, including the method used for notification, nominating, and
35 voting. The commission may create commission districts and boundaries,
36 and may also establish a weighted voting procedure for election of
37 commission members. The commission shall hold its annual meeting
38 during the month of October each year for the purpose of nominating

1 commission members and the transaction of other business. Public
2 notice of the meeting shall be given by the commission in the manner it
3 determines is appropriate. A producer may on his or her own motion
4 file his or her name with the commission for the purpose of receiving
5 notice of the meeting. The nonreceipt of the notice by any interested
6 person does not invalidate the proceedings.

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

10 NEW SECTION. **Sec. 6.** (1) In the event a position becomes vacant
11 due to resignation, disqualification, death, or for any other reason,
12 the position until the next annual meeting shall be filled by vote of
13 the remaining members of the commission. At the annual meeting a
14 commissioner shall be elected to fill the balance of the unexpired
15 term.

16 (2) Each member of the commission shall be compensated in
17 accordance with RCW 43.03.230 and shall be reimbursed for actual travel
18 expenses incurred in carrying out the provisions of this chapter.
19 Employees of the commission may also be reimbursed for actual travel
20 expenses when on official commission business.

21 NEW SECTION. **Sec. 7.** Obligations incurred by the commission and
22 liabilities or claims against the commission may be enforced only
23 against the assets of the commission in the same manner as if it were
24 a corporation and no liability for the debts or actions of the
25 commission exists against either the state of Washington or any
26 subdivision or instrumentality thereof or against any member, officer,
27 employee, or agent of the commission in his or her individual capacity.
28 The members of the commission, including employees of the commission,
29 may not be held responsible individually or any way whatsoever to any
30 person for errors in judgment, mistakes, or other acts, either of
31 commission or omission, as principal, agent, person, or employees,
32 except for their own individual acts of dishonesty or crime. A person
33 or employee may not be held responsible individually for any act or
34 omission of any other members of the commission.

35 NEW SECTION. **Sec. 8.** The powers and duties of the commission
36 include:

- 1 (1) To elect a chairman and such officers as the commission deems
2 advisable. The commission shall adopt rules for its own governance,
3 which provide for the holding of an annual meeting for the election of
4 officers and transaction of other business and for such other meetings
5 as the commission may direct;
- 6 (2) To adopt any rules necessary to carry out the purposes of this
7 chapter, in conformance with chapter 34.05 RCW;
- 8 (3) To administer and do all things reasonably necessary to carry
9 out the purposes of this chapter;
- 10 (4) At the pleasure of the commission, to employ a treasurer who is
11 responsible for all receipts and disbursements by the commission and
12 the faithful discharge of whose duties shall be guaranteed by a bond at
13 the sole expense of the commission;
- 14 (5) At the pleasure of the commission, to employ and discharge
15 managers, secretaries, agents, attorneys, and employees and to engage
16 the services of independent contractors as the commission deems
17 necessary, to prescribe their duties, and to fix their compensation;
- 18 (6) To engage directly or indirectly in the promotion of Washington
19 forest products and managed forests, and shall in the good faith
20 judgment of the commission be in aid of the marketing, advertising, or
21 sale of forest products, or of research related to such marketing,
22 advertising, or sale of forest products, or of research related to
23 managed forests;
- 24 (7) To enforce the provisions of this chapter, including
25 investigating and prosecuting violations of this chapter;
- 26 (8) To acquire and transfer personal and real property, establish
27 offices, incur expense, and enter into contracts. Contracts for
28 creation and printing of promotional literature are not subject to
29 chapter 43.78 RCW, but such contracts may be canceled by the commission
30 unless performed under conditions of employment which substantially
31 conform to the laws of this state and the rules of the department of
32 labor and industries. The commission may create such debt and other
33 liabilities as may be reasonable for proper discharge of its duties
34 under this chapter;
- 35 (9) To maintain such account or accounts with one or more qualified
36 public depositaries as the commission may direct, to cause moneys to be
37 deposited therein, and to expend moneys for purposes authorized by this
38 chapter by drafts made by the commission upon such institutions or by
39 other means;

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

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

9 (12) To employ, designate as agent, act in concert with, and enter
10 into contracts with any person, council, commission, or other entity
11 for the purpose of promoting the general welfare of the forest products
12 industry and particularly for the purpose of assisting in the sale and
13 distribution of Washington forest products in domestic and foreign
14 commerce, expending moneys as it may deem necessary or advisable for
15 such purpose and for the purpose of paying its proportionate share of
16 the cost of any program providing direct or indirect assistance to the
17 sale and distribution of Washington forest products in domestic or
18 foreign commerce, and employing and paying for vendors of professional
19 services of all kinds;

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

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

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

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

34 NEW SECTION. **Sec. 10.** (1) The commission shall cause a list to be
35 prepared of all Washington producers of forest products from any
36 information available from the commission, producers' association, or
37 producers, including tax records from the department of revenue. This

1 list shall contain the names and addresses of all persons who produce
2 forest products within this state, the amount of forest products
3 produced during the period designated by the commission, and the
4 assessment amount for each member. The list is considered confidential
5 and may be reviewed only by the employees of the commission, except for
6 information that may be disclosed to the public and commission members
7 under subsection (4) of this section. A qualified person may, at any
8 time, have his or her name placed upon the list by delivering or
9 mailing the information to the commission. This list shall be
10 corrected and brought up to date in accordance with evidence and
11 information available to the commission on or before December 31st of
12 each year, or as soon thereafter as possible. For all purposes of
13 giving notice and holding referendums, the list on hand, corrected up
14 to the day next preceding the date for issuing notices or ballots as
15 the case may be, is, for purposes of this chapter, the list of all
16 producers entitled to notice or to assent or dissent or to vote.

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

21 (3) The department of revenue may charge the commission for the
22 reasonable costs of providing reports of harvest activity on a
23 quarterly basis.

24 (4) Any taxpayer information received by the commission from the
25 department of revenue may only be used for the limited purposes of
26 establishing lists of producers necessary to determine eligibility for
27 voting, eligibility for serving as a commission member, the amount of
28 assessments owed, or other necessary purposes as established by law.
29 Any return or tax information received from the department of revenue
30 may be reviewed only by the employees of the commission. Employees may
31 disclose to the public and commission members a list of commission
32 members, groupings of at least three commission members by the amount
33 of forest products harvested over any time period designated by the
34 commission of at least one quarter, and the members who are eligible
35 for the various positions on the commission.

36 NEW SECTION. **Sec. 11.** (1) To provide for permanent funding of the
37 forest products commission, an assessment shall be levied by the
38 commission on producers of each species of forest products. The

1 initial rate of assessment that shall be submitted for approval by
2 referendum pursuant to section 12 of this act is fifty-seven cents per
3 thousand board feet. The initial assessment is not effective until
4 approved by a majority of producers as required by section 12 of this
5 act.

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

15 (3) The forest products commission may raise the assessment on
16 forest products in excess of the fiscal growth factor under chapter
17 43.135 RCW. The assessment limits established by this section are
18 solely to provide prior legislative authority for the purposes of RCW
19 43.135.055 and are not a limit on the authority of the forest products
20 commission to alter assessments in any manner not limited by RCW
21 43.135.055. However, any alteration in assessments made under this
22 section must be made with the procedural requirements established by
23 this chapter for altering such assessments.

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

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

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

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

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

23 NEW SECTION. **Sec. 14.** A due and payable assessment levied in the
24 amount determined by the commission under section 11 of this act
25 constitutes a personal debt of every person so assessed, or who
26 otherwise owes the assessment, and the assessment is due and payable to
27 the commission when payment is called for by the commission. If a
28 person fails to pay the commission the full amount of the assessment by
29 the date due, the commission may add to the unpaid assessment an amount
30 not exceeding ten percent of the assessment to defray the cost of
31 enforcing its collection. If the person fails to pay any due and
32 payable assessment or other such sum, the commission may bring a civil
33 action for collection against the person or persons in a court of
34 competent jurisdiction. The action shall be tried and judgment
35 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. Disclosure of return or tax information may be made only
15 to employees of the commission and not to commission members.
16 Employees are authorized to use this information in accordance with
17 section 10(4) of this act. Employees are subject to all civil and
18 criminal penalties provided under RCW 82.32.330 for disclosures made to
19 another person not entitled under the provisions of this section or
20 section 10 of this act to knowledge of such information.

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

23 NEW SECTION. Sec. 22. 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 **2SHB 1835** - S COMM AMD

28 By Committee on Natural Resources, Parks & Shorelines

29 ADOPTED 04/06/01

30 On page 1, line 1 of the title, after "commission;" strike the
31 remainder of the title and insert "amending RCW 42.17.31907 and

1 43.135.055; adding a new section to chapter 82.32 RCW; and adding a new
2 chapter to Title 15 RCW."

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