

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2502

Chapter 251, Laws of 2002

(partial veto)

57th Legislature
2002 Regular Session

FOREST PRODUCTS COMMISSION

EFFECTIVE DATE: 6/13/02

Passed by the House February 12, 2002
Yeas 97 Nays 0

FRANK CHOPP
**Speaker of the House of
Representatives**

Passed by the Senate March 6, 2002
Yeas 49 Nays 0

BRAD OWEN
President of the Senate

Approved March 29, 2002, with the
exception of section 1, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2502** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

FILED

March 29, 2002 - 3:46 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2502

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Sump, Doumit, Rockefeller, Pearson, Jackley and Chase)

Read first time 01/29/2002. Referred to Committee on .

1 AN ACT Relating to the forest products commission; amending RCW
2 15.100.010, 15.100.030, and 15.100.040; and adding a new section to
3 chapter 15.100 RCW.

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

5 **Sec. 1. RCW 15.100.010 and 2001 c 314 s 1 are each amended to*
6 *read as follows:*

7 *(1) The legislature finds that the creation of a forest products*
8 *commission would assist in expanding the state's economy, because:*

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

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

18 *(3)) (c) Forest products are made from a renewable resource and*
19 *are more environmentally sound than many alternative products;*

1 (d) Proper promotion of forest products is vital to the producers
2 of these products and the continued economic well-being of the citizens
3 of the state; and

4 (e) Research related to managed forests and the promotion of
5 managed forests can yield critical information for complying with the
6 existing comprehensive state and federal scheme regulating timber
7 harvest.

8 (2) The legislature also finds that any advertising, marketing, and
9 public education related to the sale of forest products by the forest
10 products commission is government speech that provides a benefit for
11 the citizens of the state and is thereby entitled to first amendment
12 protection.

13 *Sec. 1 was vetoed. See message at end of chapter.

14 **Sec. 2.** RCW 15.100.030 and 2001 c 314 s 3 are each amended to read
15 as follows:

16 (1)(a) There is created a commodity commission to be known and
17 designated as the Washington forest products commission. The
18 commission is composed of nine voting members. The commission may, in
19 its sole discretion, add or remove nonvoting ex officio members to the
20 commission. Of the members, six shall be from western Washington, and
21 three shall be from eastern Washington. After the initial election of
22 commission members, however, if a position cannot be filled by a member
23 from eastern Washington within sixty days from the date on which
24 nominations may first be received because of a lack of candidates, the
25 position may be filled by a member from western Washington. Under no
26 circumstances will there be less than two board members from eastern
27 Washington. If a position was filled by a member from western
28 Washington because of a lack of candidates from eastern Washington, and
29 districts are not used for the nomination and election of members, then
30 a person from eastern Washington must fill the next available vacancy
31 or open position at the next election to bring the number of
32 representatives from eastern Washington up to three members. All
33 members shall be elected by the entire group of producers unless the
34 commission creates districts for the members as authorized in RCW
35 15.100.050. If districts are used for the nomination and election of
36 commission members, and it does not appear that one of the positions
37 from eastern Washington will be filled because of a lack of candidates,
38 then a commission member who resides in western Washington must be

1 elected by the entire group of producers as an at-large member. The
2 position of the western Washington member who is elected as an at-large
3 member shall be filled by a member from eastern Washington at the
4 expiration of the term of the at-large member. If districts are not
5 used for the nomination and election of members, the commission shall
6 strive to achieve representation on the commission from the different
7 geographic regions of the state.

8 (b) Of the six members from western Washington, three members must
9 have annual harvests of more than seventy-five million board feet, and
10 three members must have annual harvests between two million board feet
11 and seventy-five million board feet.

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

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

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

31 (4) Five voting members of the commission constitute a quorum for
32 the transaction of all business and the carrying out of the duties of
33 the commission.

34 (5) The regular term of office of the members is four years from
35 November 1st following their election and until their successors are
36 elected and qualified. However, the first terms of the members elected
37 in the initial November 1st(~~(1971-2001)~~) election is as follows:
38 Positions one, four, and seven terminate on November 1st, ((2003)) two
39 years after the initial election is held; positions two, five, and

1 eight terminate on November 1st, ((2004)) three years after the initial
2 election is held; and positions three, six, and nine terminate on
3 November 1st, ((2005)) four years after the initial election is held.

4 **Sec. 3.** RCW 15.100.040 and 2001 c 314 s 4 are each amended to read
5 as follows:

6 (1) The director shall call the initial meeting of producers of
7 forest products for the purpose of nominating their respective members
8 of the commission after receiving notice from an association
9 representing producers of forest products that substantial interest
10 exists in forming a forest products commission. Public notice of the
11 meeting shall be given by the director in the manner the director
12 determines is appropriate. A producer may on his or her own motion
13 file his or her name with the director for the purpose of receiving
14 notice of the meeting. The nonreceipt of the notice by any interested
15 person does not invalidate the proceedings.

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

19 (3) For the initial election of commission members, any qualified
20 producer may be nominated orally for a commissioner position at the
21 meeting convened by the director. Nominations may also be made within
22 five days prior to the meeting by a written petition filed with the
23 department, signed by at least five producers who reside in the state.
24 If the director determines that one of the positions from eastern
25 Washington will go unfilled because of a lack of candidates, the
26 director shall announce that this position shall be filled by a member
27 from western Washington. If the position designated for eastern
28 Washington is filled by a member from western Washington because of a
29 lack of candidates from eastern Washington, this position shall be
30 designated as position number seven by the director for purposes of RCW
31 15.100.030(5). Under no circumstances will there be less than two
32 board members from eastern Washington.

33 (4) The initial members of the commission shall be elected by
34 secret mail ballot under the supervision of the director at the same
35 time the referendum is submitted under RCW 15.100.120 calling for the
36 creation of the commission and the imposition of the initial
37 assessment. If a nominee does not receive a majority of the votes on
38 the first ballot, a run-off election shall be held by mail in a similar

1 manner between the two candidates for the position receiving the
2 largest number of votes.

3 (5) If the director determines under RCW 15.100.120(3) that the
4 requisite approval for the establishment of a commission has not been
5 given, any subsequent efforts to create a commission must follow the
6 procedures established under this chapter for the initial nomination
7 and election of members.

8 NEW SECTION. Sec. 4. A new section is added to chapter 15.100 RCW
9 to read as follows:

10 The association responsible for giving the director notice under
11 RCW 15.100.040 that substantial interest exists in forming a forest
12 products commission shall reimburse the department for its costs
13 associated with conducting a proceeding to initiate a commission under
14 RCW 15.100.040 and 15.100.120. If the necessary approval is received
15 for the creation of a commission, the commission shall reimburse the
16 association for the costs paid to the department when funds become
17 available.

Passed the House February 12, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 29, 2002, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 29, 2002.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 1,
3 Substitute House Bill No. 2502 entitled:

4 "AN ACT Relating to the forest products commission;"

5 Substitute House Bill No. 2502 revises procedures regarding the
6 election of commissioners to the Forest Products Commission. I support
7 these changes.

8 However, subsection 1(2) of this bill stated that any advertising,
9 marketing and public education related to the sale of forest products
10 by the commission "is government speech that provides a benefit for the
11 citizens of the state" and is thereby entitled to First Amendment
12 protection.

13 In response to a 2001 U.S. Supreme Court decision, *Department of*
14 *Agriculture vs. United Foods*, questions have been raised regarding the
15 authority of commodity commissions to assess producers for costs
16 associated with advertising, marketing and public education.
17 Subsection 1(2) was an attempt to clarify that the Commission has such
18 authority, and that it does not violate the right to free speech.

19 The implications of the court decision on the authority of
20 commodity commissions, and the best means by which to address them, are

1 not clear. Rather than doing this in a piecemeal manner, my preference
2 is that this issue be resolved comprehensively, dealing with all state
3 commodity commissions where appropriate.

4 For these reasons, I have vetoed section 1 of Substitute House Bill
5 No. 2502.

6 With the exception of section 1, Substitute House Bill No. 2502 is
7 approved."