

SENATE BILL REPORT

ESB 6661

As Passed Senate, February 10, 2006

Title: An act relating to establishing the Washington beer commission.

Brief Description: Establishing the Washington beer commission.

Sponsors: Senators Rasmussen, Esser, Jacobsen, Schoesler and Kohl-Welles.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 1/24/06, 1/26/06 [DP].
Passed Senate: 2/10/06, 45-0.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Schoesler, Ranking Minority Member; Delvin, Jacobsen, Morton and Sheldon.

Staff: Sam Thompson (786-7413)

Background: Several industry-funded state commissions have been established to promote particular agricultural commodities. Some have been formed under statutory procedures permitting their creation after assent by affected producers. Examples include the barley, bulb, and wheat commissions. Others--including the apple, beef, and wine commissions--have been established outright by statute, without an approval process involving affected producers. To fund activities, all commissions levy assessments upon affected producers.

Most commodity commissions concern raw agricultural products (e.g., raspberries, asparagus, and hops). An exception is the state Wine Commission, formed to promote Washington wine. It is suggested that a similar commission be created to promote Washington beer produced by micro-brewers.

Summary of Bill: A Washington Beer Commission may be created upon approval of affected producers in a referendum conducted by secret ballot. "Affected producers" are Washington-licensed producers producing less than 100,000 barrels annually per location. The commission will promote Washington-produced beer, with oversight by the director of the Washington State Department of Agriculture (WSDA). To fund its activities, the commission is authorized to assess affected producers and to sell beer at beer festivals.

Referendum. Five affected petitioners may initiate a referendum for commission approval and an assessment to fund its activities by filing a petition. The WSDA director may require petitioners to defray referendum expenses.

The referendum must be conducted within 60 days of receipt of the petition. The WSDA director will establish a list of affected producers, with production by each producer in the preceding fiscal year, to be certified as the referendum mailing list. Information will be

mailed to each affected producer for verification. Inadvertent failure to notify an affected producer does not invalidate a referendum.

For approval, at least 51 percent of affected participating producers must assent; 30 percent of affected producers and 30 percent of production must be represented in the vote. WSDA will tally results and notify affected producers. An affected producer may dispute results and request a recount. If the WSDA director determines that assent has been given, the director will, within 60 days after assent, appoint commission members and direct the commission to implement the assessment. If the director determines that assent has not been given, the director will take no further action. The director is not required to hold a referendum more than once in any 12-month period.

Composition; Terms; Appointment. The commission will consist of seven voting members: six producers serving staggered three-year terms and the WSDA director. The WSDA director will appoint the producer members, considering recommendations of affected producers and seeking balanced statewide representation.

Members must be at least 21, citizens and residents of Washington, and engaged in producing beer (i.e., deriving a substantial portion of income from beer production or having a substantial investment in production as owners, lessees, partners, managers, or executive officers). No more than one member may be part of the same firm, association, or other organization.

Procedure; Travel Expenses. Five voting members constitute a quorum. Members will elect a chair and officers. The commission must adopt governance rules providing for annual meetings to elect officers and transact other business, and may provide for additional meetings. Commission members and employees will be reimbursed for travel expenses.

Assessments. Pursuant to the referendum, the commission will levy an annual assessment of 10 cents per barrel produced by affected producers, up to 10,000 barrels per location. The commission may reduce individual assessments based on in-kind contributions. The commission will adopt administrative rules concerning payment and collection of assessments.

The commission will deposit assessments in a separate account in a state depository. Expenditures and disbursements from the account may be made without a legislative appropriation.

Assessments constitute a personal debt of those assessed and are due when the commission calls for payment. If a producer fails to pay, the commission may add up to 10 percent of the assessment to defray collection costs. The commission may bring civil actions to collect delinquent assessments.

The commission will develop a reporting system to document that affected producers are reporting quantities of beer produced and paying the required assessment.

WSDA Costs; Reimbursement. The commission will reimburse all necessary implementing costs incurred by WSDA. The WSDA director may provide staff support if a position is not directly funded by the Legislature and costs are related to activity undertaken on behalf of the commission.

General Powers; Beer Festivals. The commission may do all things reasonably necessary to effect its granted authority. It may:

- Conduct promotional hosting;
- Employ and discharge staff, independent contractors, and private legal counsel;
- Receive donations of beer from producers for promotional purposes, to be disseminated without charge;
- Acquire in any lawful manner and disseminate beer without charge for agricultural development or trade promotion;
- Promote Washington beer by conducting unique beer tastings without charge;
- Fund the commission through sponsorship of up to 12 beer festivals annually, at which beer may be sold to festival participants. The commission qualifies for a special occasion license issued by the state Liquor Control Board (LCB), but must comply with applicable LCB regulations. The commission may not conduct beer festivals before July 1, 2007, if SSB 6838 (authorizing a statewide nonprofit organization of microbreweries to hold a special occasion liquor license, until June 30, 2007, to conduct up to six beer festivals) is enacted;
- Participate in proceedings worldwide relating to beer production, regulation, distribution, sale, or use, including authorized lobbying;
- Acquire and transfer property, establish offices, incur expenses, enter into contracts, and create debt and other liabilities reasonable for proper discharge of its duties;
- Maintain public depository accounts, expend money for authorized purposes, and keep records of financial transactions, making them available for audit by the State Auditor;
- Create and maintain a list of producers and disseminate information among and solicit their opinions concerning commission activities;
- Enter into contracts and agreements to promote the industry and assist in selling and distributing Washington beer;
- Sue and be sued, without individual liability for acts of the commission within the scope of authorized powers; and
- Serve as liaison with the LCB on behalf of the commission.

Beer and malt beverages furnished to the commission and used within the state are subject to beer and wine taxes. No liquor license, permit, or bond is required of the commission for authorized promotional activities.

Research; Promotion; Education. The commission may create and conduct research, promotional, and educational campaigns. It must ascertain producers' needs, market conditions, and public awareness, and consider this information in discharging its duties.

Major campaign objectives will be:

- Establishing Washington beer in markets worldwide;
- Promoting Washington breweries as tourist attractions;
- Encouraging favorable worldwide press coverage;
- Encouraging favorable legislation and regulation in markets worldwide;
- Encouraging promotion of Washington hops, malting barley, and wheat; and
- Fostering economic conditions favorable to investment in production of Washington beer.

List of Members; Barrelage. The commission will prepare an annually-updated address list and barrelage amount of all affected producers produced during a period designated by the commission. Affected producers must ensure that they submit correct addresses and production data to the commission.

Oversight by WSDA Director. The commission will submit advertising, promotion, education, market research, and development projects to the WSDA director for approval. The WSDA director will review advertising or promotion programs to ensure that no false claims are made. The commission will annually submit its research, education and training plans, and budget to the WSDA director for approval.

Liability. Commission obligations and claims against the commission will be enforced only against its assets. Members or employees may not be held individually responsible for errors in judgment, mistakes, or other acts, except for individual acts of dishonesty or crime. Members will be severally and not jointly liable, and no member is liable for default of another. Members are state officers or volunteers entitled to benefits of laws governing actions against the state.

Records Exempt from Disclosure. Certain business, commission, and WSDA records relating to the commission and affected producers are exempt from public disclosure. General statements based upon reports may be issued, as long as they do not identify information furnished by any person, and the name of any person violating applicable laws and the manner of violation may be published.

Enforcement. County and state law enforcement officers, the LCB and its agents, and WSDA employees will enforce commission statutes and other applicable law. Prosecutions may be instituted in superior court in any county in which a defendant resides, in which the violation was committed, or in which a defendant has his or her principal place of business.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The industry, which includes 82 craft brewers and brewpubs in production in the state, fully supports this legislation. The model is the act creating the state Wine Commission. Some affected producers do not have much money for marketing activities that could be authorized under this legislation. Small breweries statewide help the economy and provide well-paying jobs. Affected producers worked with WSDA to craft this legislation.

Testimony Against: None.

Who Testified: PRO: T.K. Bentler, Arlen Harris, Janelle Pritchard and Roger Bialous, Washington Brewers Guild.

House Amendment(s): A nonprofit statewide organization of microbreweries (i.e, the Washington Brewers Guild) may hold a special occasion liquor license to conduct up to six beer festivals until July 1, 2007. The Washington Beer Commission's authority to conduct beer

festivals commences July 1, 2007. Definitions are added for "department" (meaning the Department of Agriculture) and "director" (meaning the Department of Agriculture Director or authorized representative).