

2 **ESHB 2688** - S COMM AMD

3 By Committee on Agriculture & International Trade

4 ADOPTED 03/06/02

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

7 "Sec. 1. RCW 15.65.020 and 1993 c 80 s 2 are each amended to read
8 as follows:

9 The following terms are hereby defined:

10 (1) "Director" means the director of agriculture of the state of
11 Washington or his or her duly appointed representative. The phrase
12 "director or his or her designee" means the director unless, in the
13 provisions of any marketing agreement or order, he or she has
14 designated an administrator, board, or other designee to act (~~for~~
15 ~~him~~) in the matter designated, in which case "director or his or her
16 designee" means for such order or agreement the administrator, board,
17 or other person(s) so designated and not the director.

18 (2) "Department" means the department of agriculture of the state
19 of Washington.

20 (3) "Marketing order" means an order (~~issued~~) adopted by the
21 director (~~pursuant to~~) under this chapter that establishes a
22 commodity board for an agricultural commodity or agricultural
23 commodities with like or common qualities or producers.

24 (4) "Marketing agreement" means an agreement entered into and
25 issued by the director pursuant to this chapter.

26 (5) "Agricultural commodity" means any of the following commodities
27 or products: Llamas, alpacas, or any other animal or any distinctive
28 type of agricultural, horticultural, viticultural, floricultural,
29 vegetable, or animal product, including, but not limited to, products
30 qualifying as organic food products under chapter 15.86 RCW and private
31 sector cultured aquatic products as defined in RCW 15.85.020 and other
32 fish and fish products, either in its natural or processed state,
33 including beehives containing bees and honey and Christmas trees but
34 not including timber or timber products. The director is hereby
35 authorized to determine (on the basis of common usage and practice)

1 what kinds, types or sub-types should be classed together as an
2 agricultural commodity for the purposes of this chapter.

3 (6) "Production area" and "marketing area" means any area defined
4 as such in any marketing order or agreement in accordance with RCW
5 15.65.350. "Affected area" means the marketing or production area so
6 defined in such order, agreement or proposal.

7 (7) "Unit" of an agricultural commodity means a unit of volume,
8 weight, quantity, or other measure in which such commodity is commonly
9 measured. The director shall designate in each marketing order and
10 agreement the unit to be used therein.

11 (8) "Affected unit" means in the case of marketing agreements and
12 orders drawn on the basis of a production area, any unit of the
13 commodity specified in or covered by such agreement or order which is
14 produced in such area and sold or marketed or delivered for sale or
15 marketing; and "affected unit" means, in the case of marketing
16 agreements and orders drawn on the basis of marketing area, any unit of
17 the commodity specified in or covered by such agreement or order which
18 is stored in frozen condition or sold or marketed or delivered for sale
19 or marketing within such marketing area: PROVIDED, That in the case of
20 marketing agreements "affected unit" shall include only those units
21 which are produced by producers or handled by handlers who have
22 assented to such agreement.

23 (9) "Affected commodity" means that part or portion of any
24 agricultural commodity which is covered by or forms the subject matter
25 of any marketing agreement or order or proposal, and includes all
26 affected units thereof as herein defined and no others.

27 (10) "Producer" means any person engaged in the business of
28 producing any agricultural commodity for market in commercial
29 quantities. "Affected producer" means any producer (~~(of an affected~~
30 ~~commodity)) who is subject to a marketing order or agreement. "To~~
31 produce" means to act as a producer. For the purposes of RCW 15.65.140
32 and 15.65.160 as now or hereafter amended "producer" shall include
33 bailees who contract to produce or grow any agricultural product on
34 behalf of a bailor who retains title to the seed and its resulting
35 agricultural product or the agricultural product delivered for further
36 production or increase.

37 (11) "Handler" means any person who acts, either as principal,
38 agent or otherwise, in processing, selling, marketing or distributing
39 an agricultural commodity or storage of a frozen agricultural commodity

1 which was not produced by him or her. "Handler" does not mean a common
2 carrier used to transport an agricultural commodity. "Affected
3 handler" means any handler of an affected commodity. "To handle" means
4 to act as a handler.

5 (12) "Producer-handler" means any person who acts both as a
6 producer and as a handler with respect to any agricultural commodity.
7 A producer-handler shall be deemed to be a producer with respect to the
8 agricultural commodities which he or she produces, and a handler with
9 respect to the agricultural commodities which he or she handles,
10 including those produced by himself or herself.

11 (13) "Cooperative association" means any incorporated or
12 unincorporated association of producers which conforms to the
13 qualifications set out in the act of congress of the United States of
14 February 18, 1922 as amended, known as the "Capper-Volstead Act" and
15 which is engaged in making collective sales or in marketing any
16 agricultural commodity or product thereof or in rendering service for
17 or advancing the interests of the producers of such commodity on a
18 nonprofit cooperative basis.

19 (14) "Member of a cooperative association" means any producer who
20 markets his or her product through such cooperative association and who
21 is a voting stockholder of or has a vote in the control of or is a
22 party to a marketing agreement with such cooperative association with
23 respect to such product.

24 (15) "Producer marketing" or "marketed by producers" means any or
25 all operations performed by any producer or cooperative association of
26 producers in preparing for market and marketing, and shall include:
27 (a) selling any agricultural commodity produced by such producer(s) to
28 any handler; (b) delivering any such commodity or otherwise disposing
29 of it for commercial purposes to or through any handler.

30 (16) "Commercial quantities" as applied to producers and/or
31 production means such quantities per year (or other period of time) of
32 an agricultural commodity as the director finds are not less than the
33 minimum which a prudent man engaged in agricultural production would
34 produce for the purpose of making such quantity of such commodity a
35 substantial contribution to the economic operation of the farm on which
36 such commodity is produced. "Commercial quantities" as applied to
37 handlers and/or handling means such quantities per year (or other
38 period of time) of an agricultural commodity or product thereof as the
39 director finds are not less than the minimum which a prudent man

1 engaged in such handling would handle for the purpose of making such
2 quantity a substantial contribution to the handling operation in which
3 such commodity or product thereof is so handled. In either case the
4 director may in his or her discretion: (a) Determine that substantial
5 quantity is any amount above zero; and (b) apply the quantity so
6 determined on a uniform rule applicable alike to all persons which he
7 or she finds to be similarly situated.

8 (17) "Commodity board" means any board established pursuant to RCW
9 15.65.220. "Board" means any such commodity board unless a different
10 board is expressly specified.

11 (18) "Sell" includes offer for sale, expose for sale, have in
12 possession for sale, exchange, barter or trade.

13 (19) "Section" means a section of this chapter unless some other
14 statute is specifically mentioned. The present includes the past and
15 future tenses, and the past or future the present. The masculine
16 gender includes the feminine and neuter. The singular number includes
17 the plural and the plural includes the singular.

18 (20) "Represented in a referendum" means that a written document
19 evidencing approval or assent or disapproval or dissent is duly and
20 timely filed with or mailed to the director by or on behalf of an
21 affected producer and/or a volume of production of an affected
22 commodity in a form which the director finds meets the requirements of
23 this chapter. "Referendum" means a vote by the affected parties or
24 affected producers which is conducted by secret ballot.

25 (21) "Person" (~~(as used in this chapter shall mean any person,~~
26 ~~firm, association or corporation)~~) means any individual, firm,
27 corporation, limited liability company, trust, association,
28 partnership, society, or any other organization of individuals, or any
29 unit or agency of local, state, or federal government.

30 (22) "Affected parties" means any producer, affected producer,
31 handler, or commodity board member.

32 (23) "Assessment" means the monetary amount established in a
33 marketing order or agreement that is to be paid by each affected
34 producer to a commodity board in accordance with the schedule
35 established in the marketing order or agreement.

36 (24) "List of affected parties" means a list containing the names
37 and mailing addresses of affected parties. This list shall contain the
38 names and addresses of all affected parties and, if requested by the

1 director, the amount, by unit, of the affected commodity produced
2 during a designated period under this chapter.

3 (25) "List of affected producers" means a list containing the names
4 and mailing addresses of affected producers. This list shall contain
5 the names and addresses of all affected producers and, if requested by
6 the director, the amount, by unit, of the affected commodity produced
7 during a designated period under this chapter.

8 (26) "List of affected handlers" means a list containing the names
9 and addresses of affected handlers. This list shall contain the names
10 and addresses of all affected handlers and, if requested by the
11 director, the amount, by unit, of the affected commodity handled during
12 a designated period under this chapter.

13 (27) "Mail" or "send" for purposes of any notice relating to rule
14 making, referenda, or elections means regular mail or electronic
15 distribution, as provided in RCW 34.05.260 for rule making.
16 "Electronic distribution" or "electronically" means distribution by
17 electronic mail or facsimile mail.

18 (28) "Percent by numbers" means the percent of those persons on the
19 list of affected parties or affected producers.

20 (29) "Rule-making proceedings" means the rule-making provisions as
21 outlined in chapter 34.05 RCW.

22 (30) "Vacancy" means that a board member leaves or is removed from
23 a board position prior to the end of a term, or a nomination process
24 for the beginning of a term concludes with no candidates for a
25 position.

26 (31) "Volume of production" means the percent of the average volume
27 of production of the affected commodity of those on the list of
28 affected parties or affected producers for a production period. For
29 the purposes of this chapter, a production period is a minimum three-
30 year period or as specified in the marketing order or agreement.

31 NEW SECTION. Sec. 2. A new section is added to chapter 15.65 RCW
32 to read as follows:

33 The history, economy, culture, and the future of Washington state
34 to a large degree all involve agriculture. In order to develop and
35 promote Washington's agricultural products as part of the existing
36 comprehensive scheme to regulate agricultural commodities, the
37 legislature declares:

1 (1) That the marketing of agricultural products within this state
2 is in the public interest. It is vital to the continued economic well-
3 being of the citizens of this state and their general welfare that its
4 agricultural commodities be properly promoted by (a) enabling producers
5 of agricultural commodities to help themselves in establishing orderly,
6 fair, sound, efficient, and unhampered marketing, grading, and
7 standardizing of the commodities they produce and (b) working towards
8 stabilizing the agricultural industry by increasing consumption of
9 agricultural commodities within the state, the nation, and
10 internationally;

11 (2) That farmers and ranchers operate within a regulatory
12 environment that imposes burdens on them for the benefit of society and
13 the citizens of the state and includes restrictions on marketing
14 autonomy. Those restrictions may impair the agricultural producer's
15 ability to compete in local, domestic, and foreign markets;

16 (3) That it is now in the overriding public interest that support
17 for the agricultural industry be clearly expressed, that adequate
18 protection be given to agricultural commodities, uses, activities, and
19 operations, and that each agricultural commodity be promoted
20 individually, and as part of a comprehensive industry to:

21 (a) Enhance the reputation and image of Washington state's
22 agricultural commodities;

23 (b) Increase the sale and use of Washington state's agricultural
24 commodities in local, domestic, and foreign markets;

25 (c) Protect the public by educating the public in reference to the
26 quality, care, and methods used in the production of Washington state's
27 agricultural commodities;

28 (d) Increase the knowledge of the health-giving qualities and
29 dietetic value of Washington state's agricultural commodities and
30 products; and

31 (e) Support and engage in programs or activities that benefit the
32 planting, production, harvesting, handling, processing, marketing, and
33 uses of agricultural commodities produced in Washington state;

34 (4) That the director seek to enhance, protect, and perpetuate the
35 ability of the private sector to produce food and fiber, and seek to
36 maintain the economic well-being of the agricultural industry in
37 Washington state consistent with its regulatory activities and
38 responsibilities;

1 (5) That the director is hereby authorized to implement,
2 administer, and enforce this chapter through the adoption of marketing
3 orders that establish commodity boards; and

4 (6) That this chapter is enacted in the exercise of the police
5 powers of this state for the purpose of protecting the health, peace,
6 safety, and general welfare of the people of this state.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 15.65 RCW
8 to read as follows:

9 This chapter and the rules adopted under it are only one aspect of
10 the comprehensively regulated agricultural industry.

11 (1) Other laws applicable to agricultural commodities include the
12 following chapters and the rules adopted thereunder:

13 Chapter 15.08 RCW Horticultural pests and diseases;

14 Chapter 15.13 RCW Horticultural plants and facilities--Inspection
15 and licensing;

16 Chapter 15.14 RCW Planting stock;

17 Chapter 15.15 RCW Certified seed potatoes;

18 Chapter 15.17 RCW Standards of grades and packs;

19 Chapter 15.19 RCW Certification and inspection of ginseng;

20 Chapter 15.30 RCW Controlled atmosphere storage of fruits and
21 vegetables;

22 Chapter 15.49 RCW Seeds;

23 Chapter 15.53 RCW Commercial feed;

24 Chapter 15.54 RCW Fertilizers, minerals, and limes;

25 Chapter 15.58 RCW Washington pesticide control act;

26 Chapter 15.60 RCW Apiaries;

27 Chapter 15.64 RCW Farm marketing;

28 Chapter 15.83 RCW Agricultural marketing and fair practices;

29 Chapter 15.85 RCW Aquaculture marketing;

30 Chapter 15.86 RCW Organic food products;

31 Chapter 15.92 RCW Center for sustaining agriculture and natural
32 resources;

33 Chapter 17.24 RCW Insect pests and plant diseases;

34 Chapter 19.94 RCW Weights and measures;

35 Chapter 20.01 RCW Agricultural products--Commission merchants,
36 dealers, brokers, buyers, agents;

37 Chapter 22.09 RCW Agricultural commodities;

1 Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including
2 provisions of 21 C.F.R. relating to the general manufacturing
3 practices, food labeling, food standards, food additives, and pesticide
4 tolerances;

5 Chapter 69.07 RCW Washington food processing act;

6 Chapter 69.25 RCW Washington wholesome eggs and egg products act;

7 Chapter 69.28 RCW Honey;

8 7 U.S.C., section 136, Federal Insecticide, Fungicide, and
9 Rodenticide Act.

10 (2) In addition to the laws and regulations listed in subsection
11 (1) of this section that apply to the agricultural industry as a whole,
12 the dry pea and lentil industry is regulated by or must comply with the
13 additional laws and rules adopted under 7 U.S.C., chapter 38,
14 Agricultural Marketing Act.

15 **Sec. 4.** RCW 15.65.040 and 2001 c 315 s 4 are each amended to read
16 as follows:

17 ~~((It is hereby declared to be the policy of this chapter))~~ The
18 director may adopt a marketing order that establishes a commodity board
19 under this chapter for any of the following purposes:

20 (1) To aid agricultural producers in preventing economic waste in
21 the marketing of their agricultural commodities and in developing more
22 efficient methods of marketing agricultural products.

23 (2) To enable agricultural producers of this state, with the aid of
24 the state:

25 (a) To develop, and engage in research for developing, better and
26 more efficient production, irrigation, processing, transportation,
27 handling, marketing, and utilization of agricultural products;

28 (b) To establish orderly marketing of agricultural commodities;

29 (c) To provide for uniform grading and proper preparation of
30 agricultural commodities for market;

31 (d) To provide methods and means (including, but not limited to,
32 public relations and promotion) for the maintenance of present markets
33 and for the development of new or larger markets, both domestic and
34 foreign, for agricultural commodities produced within this state and
35 for the prevention, modification, or elimination of trade barriers
36 which obstruct the free flow of such agricultural commodities to
37 market;

- 1 (e) To eliminate or reduce economic waste in the marketing and/or
2 use of agricultural commodities;
- 3 (f) To restore and maintain adequate purchasing power for the
4 agricultural producers of this state;
- 5 (g) To provide information or communicate on matters pertaining to
6 the production, irrigation, processing, transportation, marketing, or
7 uses of an agricultural commodity produced in Washington state to any
8 elected official or officer or employee of any agency;
- 9 (h) To provide marketing information and services for producers of
10 an agricultural commodity;
- 11 (i) To provide information and services for meeting resource
12 conservation objectives of producers of an agricultural commodity;
- 13 (j) To engage in cooperative efforts in the domestic or foreign
14 marketing of food products of an agricultural commodity;
- 15 (k) To provide for commodity-related education and training; and
- 16 (l) To accomplish all the declared policies of this chapter.
- 17 (3) To protect the interest of consumers by assuring a sufficient
18 pure and wholesome supply of agricultural commodities of good quality
19 at all seasons and times.

20 **Sec. 5.** RCW 15.65.050 and 1961 c 256 s 5 are each amended to read
21 as follows:

22 The director shall administer and enforce this chapter and it shall
23 be his or her duty to carry out its provisions and put them into force
24 in accordance with its terms, but issuance, amendment, modification,
25 and/or suspension (~~((and/or termination))~~) of marketing agreements and
26 orders and of any terms or provisions thereof shall be accomplished
27 according to the procedures set forth in this chapter and not
28 otherwise. Whenever he or she has reason to believe that the
29 issuance(~~(())~~) or amendment (~~((or termination))~~) of a marketing agreement
30 or order will tend to effectuate any declared policy or purpose of this
31 chapter with respect to any agricultural commodity, and in the case of
32 application for issuance or amendment ten or more producers of such
33 commodity apply or (~~((in the case of application for termination ten
34 percent of the affected producers so apply))~~) when a petition for
35 amendment is submitted by majority vote of a commodity board, then the
36 director shall give due notice of, and an opportunity for, a public
37 hearing upon such issuance(~~(())~~) or amendment (~~((or termination))~~), and
38 (~~((he))~~) the director shall issue marketing agreements and orders

1 containing the provisions specified in this chapter and from time to
2 time amend (~~or terminate~~) the same whenever upon compliance with and
3 on the basis of facts adduced in accordance with the procedural
4 requirements of this chapter he or she shall find that such agreement,
5 order, or amendment:

6 (1) Will tend to effectuate one or more of the declared policies of
7 this chapter and is needed in order to effectuate the same.

8 (2) Is reasonably adapted to accomplish the purposes and objects
9 for which it is issued and complies with the applicable provisions of
10 this chapter.

11 (3) Has been approved or favored by the percentages of producers
12 and/or handlers specified in and ascertained in accordance with this
13 chapter.

14 **Sec. 6.** RCW 15.65.060 and 1961 c 256 s 6 are each amended to read
15 as follows:

16 The director shall cause any (~~proposed~~) marketing agreement,
17 order proposed for issuance, or amendment (~~or termination~~) to be set
18 out in detailed form and reduced to writing, which writing is herein
19 designated "proposal." The director shall make and maintain on file in
20 the office of the department a copy of each proposal and a full and
21 complete record of all notices, hearings, findings, decisions, assents,
22 and all other proceedings relating to each proposal and to each
23 marketing agreement and order.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 15.65 RCW
25 to read as follows:

26 (1) The director may adopt rules necessary to carry out the
27 director's duties and responsibilities under this chapter including:

28 (a) The issuance, amendment, or termination of marketing orders or
29 agreements;

30 (b) Procedural, technical, or administrative rules which may
31 address and include, but are not limited to:

32 (i) The submission of a petition to issue, amend, or terminate a
33 marketing order or agreement under this chapter;

34 (ii) Nominations conducted under this chapter;

35 (iii) Elections of board members or referenda conducted under this
36 chapter;

1 (iv) Actions of the director upon a petition to issue, amend, or
2 terminate a marketing order or agreement;

3 (c) Rules that provide for a method to fund:

4 (i) The costs of staff support for all commodity boards and
5 commissions in accordance with section 78 of this act if the position
6 is not directly funded by the legislature; and

7 (ii) The actual costs related to the specific activity undertaken
8 on behalf of an individual commodity board or commission.

9 (2) The director may adopt amendments to marketing agreements or
10 orders without conducting a referendum if the amendments are adopted
11 under the following criteria:

12 (a) The proposed amendments relate only to internal administration
13 of a marketing order or agreement and are not subject to violation by
14 a person;

15 (b) The proposed amendments adopt or incorporate by reference
16 without material change federal statutes or regulations, Washington
17 state statutes, or rules of other Washington state agencies, if the
18 material adopted or incorporated regulates the same activities as are
19 authorized under the marketing order or agreement;

20 (c) The proposed amendments only correct typographical errors, make
21 address or name changes, or clarify language of a rule without changing
22 the marketing order or agreement; and

23 (d) The content of the proposed amendments is explicitly and
24 specifically dictated by statute.

25 A marketing order or agreement shall not be amended without a
26 referendum to provide that a majority of the commodity board members be
27 appointed by the director.

28 **Sec. 8.** RCW 15.65.070 and 1987 c 393 s 5 are each amended to read
29 as follows:

30 The director shall publish notice of any hearing called for the
31 purpose of considering and acting upon any proposal for a period of not
32 less than two days in one or more newspapers of general circulation as
33 the director may prescribe. No such public hearing shall be held prior
34 to five days after the last day of such period of publication. Such
35 notice shall set forth the date, time and place of said hearing, the
36 agricultural commodity and the area covered by such proposal; a concise
37 statement of the proposal; a concise statement of each additional
38 subject upon which the director will hear evidence and make a

1 determination, and a statement that, and the address where, copies of
2 the proposal may be obtained. The director shall also mail (~~a copy of~~
3 ~~such~~) notice to all producers and handlers within the affected area
4 who may be directly affected by such proposal and whose names and
5 addresses appear, on the day next preceding the day on which such
6 notice is published, upon lists of such persons then on file in the
7 department.

8 **Sec. 9.** RCW 15.65.090 and 1961 c 256 s 9 are each amended to read
9 as follows:

10 (~~In any and every hearing conducted pursuant to any provision of~~
11 ~~this chapter~~) The director (~~and/or such examiner~~) shall have the
12 power to issue subpoenas for the production of any books, records, or
13 documents of any kind and to subpoena witnesses to be produced or to
14 appear (as the case may be) in the county wherein the principal party
15 involved in such hearing resides. No person shall be excused from
16 attending and testifying or from producing documentary evidence before
17 the director in obedience to the subpoena of the director on the ground
18 or for the reason that the testimony or evidence, documentary or
19 otherwise, required of him or her may tend to incriminate him or her or
20 subject him or her to a penalty or forfeiture, but no natural person
21 shall be prosecuted or subject to any penalty or forfeiture for or on
22 account of any transaction, matter or thing concerning which he or she
23 may be so required to testify or produce evidence, documentary or
24 otherwise, before the director in obedience to a subpoena issued by him
25 or her: PROVIDED, That no natural person so testifying shall be exempt
26 from prosecution and punishment for perjury committed in so testifying.
27 The superior court of the county in which any such hearing or
28 proceeding may be had, may compel the attendance of witnesses and the
29 production of records, papers, books, accounts, documents and testimony
30 as required by such subpoena. In case any witness refuses to attend or
31 testify or produce any papers required by the subpoena, the director or
32 his or her examiner shall so report to the superior court of the county
33 in which the proceeding is pending by petition setting forth that due
34 notice was given of the time and place of attendance of (~~said~~) the
35 witness or the production of (~~said~~) the papers and that the witness
36 has been summoned in the manner prescribed in this chapter and that the
37 fees and mileage of the witness have been paid or tendered to him or
38 her in accordance with RCW 2.40.020 and that he or she has failed to

1 attend or produce the papers required by the subpoena at the hearing,
2 cause, or proceeding specified in the notice and subpoena, or has
3 refused to answer questions propounded to him or her in the course of
4 such hearing, cause or proceeding, and shall ask an order of the court
5 to compel such witness to appear and testify before the director. The
6 court upon such petition shall enter an order directing the witness to
7 appear before the court at a time and place to be fixed in such order
8 and then and there show cause why he or she has not responded to the
9 subpoena. A certified copy of the show cause order shall be served
10 upon the witness. If it shall appear to the court that the subpoena
11 was regularly issued, the court shall enter a decree that (~~said~~) the
12 witness appear at the time and place fixed in the decree and testify or
13 produce the required papers, and on failing to obey said decree the
14 witness shall be dealt with as for contempt of court.

15 **Sec. 10.** RCW 15.65.120 and 1985 c 261 s 3 are each amended to read
16 as follows:

17 The recommended decision shall contain the text in full of any
18 recommended agreement, order, or amendment (~~(or termination)~~), and may
19 deny or approve the proposal in its entirety, or it may recommend a
20 marketing agreement, order, or amendment (~~(or termination)~~) containing
21 other or different terms or conditions from those contained in the
22 proposal: PROVIDED, That the same shall be of a kind or type
23 substantially within the purview of the notice of hearing and shall be
24 supported by evidence taken at the hearing or by documents of which the
25 director is authorized to take official notice. The final decision
26 shall set out in full the text of the agreement, order, or amendment
27 (~~(or termination)~~) covered thereby, and the director shall issue and
28 deliver or mail copies of (~~said~~) the final decision to all producers
29 and handlers within the affected area who may be directly affected by
30 such final decision and whose names and addresses appear, on the day
31 next preceding the day on which such final decision is issued, upon the
32 lists of such persons then on file in the department, and to all
33 parties of record appearing at the hearing, or their attorneys of
34 record. If the final decision denies the proposal in its entirety no
35 further action shall be taken by the director.

36 **Sec. 11.** RCW 15.65.170 and 1987 c 393 s 6 are each amended to read
37 as follows:

1 If the director determines that the requisite assent has been given
2 (~~he shall issue and put any order or amendment thereto into force,~~
3 ~~whereupon each and every provision thereof shall have the force of law.~~
4 ~~Issuance shall be accomplished by publication of a notice for one day~~
5 ~~in a newspaper of general circulation in the affected area. The notice~~
6 ~~shall state that the order has been issued and put into force and where~~
7 ~~copies of such order may be obtained)) to issue or amend a marketing
8 order, the issuance or amendment shall be adopted by rule by the
9 director within thirty days of the validation of the vote. If the
10 director determines that the requisite assent has not been given no
11 further action shall be taken by the director upon the proposal, and
12 the order contained in the final decision shall be without force or
13 effect.~~

14 NEW SECTION. Sec. 12. A new section is added to chapter 15.65 RCW
15 to read as follows:

16 The director shall not be required to hold a public hearing or a
17 referendum more than once in any twelve-month period on petitions to
18 issue, amend, or terminate a commodity marketing order if any of the
19 following circumstances are present:

20 (1) The petition proposes to establish a marketing order or
21 agreement for the same commodity;

22 (2) The petition proposes the same or a similar amendment to a
23 marketing order or agreement; or

24 (3) The petition proposes to terminate the same marketing order or
25 agreement.

26 Sec. 13. RCW 15.65.180 and 1961 c 256 s 18 are each amended to
27 read as follows:

28 The director may, upon the advice of the commodity board serving
29 under any marketing agreement or order and without compliance with the
30 provisions of RCW 15.65.050 through 15.65.170(~~(:~~

31 ~~(1) Amend any marketing agreement or order as to any minor matter~~
32 ~~or wording which does not substantially alter the provisions and~~
33 ~~intention of such agreement or order;~~

34 ~~(2))~~, suspend any such agreement or order or term or provision
35 thereof for a period of not to exceed one year, if ~~((he))~~ the director
36 finds that such suspension will tend to effectuate the declared policy
37 of this chapter(~~(:—PROVIDED, That))~~. Any ~~((such))~~ suspension of all

1 or substantially all of ((such)) a marketing agreement or order by the
2 director shall not become effective until the end of the then current
3 marketing season.

4 NEW SECTION. Sec. 14. A new section is added to chapter 15.65 RCW
5 to read as follows:

6 The director may terminate a marketing order or agreement in
7 accordance with this chapter.

8 (1) To terminate a marketing order or agreement:

9 (a) The director must receive a petition by affected producers
10 under this chapter signed by at least ten percent of the affected
11 producers; or

12 (b) A majority of a commodity board may file a petition with the
13 director.

14 (2) The petitioners must include in the petition at the time of
15 filing:

16 (a) A statement of why the marketing order or agreement and the
17 commodity board created under it no longer meets the purposes of this
18 chapter;

19 (b) The name of a person designated to represent the petitioners;
20 and

21 (c) The effective date of a marketing order or agreement
22 termination, which may not be less than one year from the date the
23 petition was filed with the director.

24 (3) Within sixty days of receipt of a petition meeting the
25 requirements of this section, the director shall commence rule-making
26 proceedings to repeal the marketing order or agreement and,
27 subsequently, a referendum on the issue.

28 (4) The director shall include a copy of a petition to terminate a
29 marketing order or agreement with the notice to affected producers when
30 rule-making proceedings are commenced.

31 (5) If the petitioners fail to meet the requirements of this
32 chapter, the director shall deny the petition and a referendum vote
33 will not be conducted. The person designated to represent the
34 petitioners shall be notified if a petition is denied.

35 NEW SECTION. Sec. 15. A new section is added to chapter 15.65 RCW
36 to read as follows:

1 Except as provided in RCW 15.65.190 or subsection (4) of this
2 section, the director, prior to termination of the marketing order or
3 agreement, shall conduct a referendum as provided in this chapter, the
4 rules adopted by the director, and the applicable marketing order or
5 agreement.

6 (1) If a referendum on the termination of a marketing order or
7 agreement is assented to, the referendum proposal shall be adopted by
8 the director within thirty days of the count of the ballots and shall
9 go into effect under chapter 34.05 RCW. If those affected producers
10 eligible to vote in the referendum do not assent, no further action
11 shall be taken by the director on the proposal.

12 (2) The list of affected producers used for conducting a referendum
13 on the termination of a marketing order or agreement shall be kept in
14 the rule-making file by the director. The list shall be certified as
15 a true representation of the referendum mailing list. Inadvertent
16 failure to notify an affected producer does not invalidate a
17 referendum.

18 (3) The list of affected producers that is certified as the true
19 representation of the mailing list of a referendum shall be used to
20 determine assent as provided for in RCW 15.65.190.

21 (4) If the director determines that one hundred percent of the
22 affected producers have filed a written application with the director
23 requesting that a marketing order or agreement be terminated, the
24 director may terminate the marketing order or agreement without
25 conducting a referendum. The termination of the marketing order or
26 agreement shall go into effect under chapter 34.05 RCW, but no sooner
27 than at the end of the marketing season then current.

28 NEW SECTION. Sec. 16. A new section is added to chapter 15.65 RCW
29 to read as follows:

30 If after complying with the procedures outlined in this chapter and
31 a referendum proposal to terminate a marketing order or agreement is
32 assented to, the affected commodity board shall:

33 (1) Document the details of all measures undertaken to terminate
34 the marketing order and identify and document all closing costs;

35 (2) Contact the office of the state auditor and arrange for a final
36 audit of the commodity board. Payment for the audit shall be from
37 commodity board funds and identified in the budget for closing costs;

1 (3) Provide for the reimbursement to affected producers of moneys
2 collected by assessment. Reimbursement shall be made to those
3 considered affected producers over the previous three-year time frame
4 on a pro rata basis and at a percent commensurate with their volume of
5 production over the previous three-year period unless a different time
6 period is specified in the marketing order or agreement. If the
7 commodity board finds that the amounts of moneys are so small as to
8 make impractical the computation and remitting of the pro rata refund,
9 the moneys shall be paid into the state treasury as unclaimed trust
10 moneys; and

11 (4) Transfer all remaining files to the department for storage and
12 archiving, as appropriate.

13 **Sec. 17.** RCW 15.65.200 and 1985 c 261 s 8 are each amended to read
14 as follows:

15 (1) Whenever application is made for the issuance of a marketing
16 agreement or order or the director otherwise determines to hold a
17 hearing for the purpose of such issuance, the director or ((his)) a
18 designee shall ~~((cause lists to be prepared from any information which
19 he has at hand or which he may obtain from producers, associations of
20 producers and handlers of the affected commodity. Such lists shall
21 contain the names and addresses of persons who produce the affected
22 commodity within the affected area, the amount of such commodity
23 produced by each such person during the period which the director
24 determines for the purposes of the agreement or order to be
25 representative, and the name of any cooperative association authorized
26 to market for him within the affected area the commodity specified in
27 the marketing agreement or order. Such lists shall also contain the
28 names and addresses of persons who handle the affected commodity within
29 the affected area and the amount of such commodity handled by each
30 person during the period which the director determines for the purposes
31 of the agreement or order to be representative. Any qualified person
32 may at any time have his name placed upon any list for which he
33 qualifies by delivering or mailing his name, address and other
34 information to the director and in such case the director shall verify
35 such person's qualifications and if he qualifies, place his name upon
36 such list. At every hearing upon the issuance, amendment or
37 termination of such order or agreement the director or his designee
38 shall take evidence for the purpose of making such lists complete and~~

1 accurate and he may employ his powers of subpoena of witnesses and of
2 books, records and documents for such purpose. After every such
3 hearing the director shall compile, complete, correct and bring lists
4 up to date in accordance with the evidence and information obtained at
5 such hearing. For all purposes of giving notice, holding referenda and
6 electing members of commodity boards, the lists on hand corrected up to
7 the day next preceding the date for issuing notices or ballots as the
8 case may be shall, for all purposes of this chapter, be deemed to be
9 the list of all persons entitled to notice or to assent or dissent or
10 to vote)) establish a list of affected parties along with volume of
11 production data covering a minimum three-year period, or in such lesser
12 time as the affected party has produced the commodity in question, from
13 information provided by the petitioners, by obtaining information on
14 affected parties from applicable producer, handler, or processor
15 organizations or associations or other sources identified as
16 maintaining the information.

17 (2) The director shall use the list of affected parties for the
18 purpose of notice, referendum proceedings, and electing and selecting
19 members of commodity boards in accordance with this chapter.

20 (3) An affected party may at any time file his or her name and
21 mailing address with the director. A list of affected parties may be
22 brought up-to-date by the director up to the day preceding a mailing of
23 a notice or ballot under this chapter and that list is deemed the list
24 of affected parties entitled to vote.

25 (4) The list of affected parties used for the issuance of a
26 marketing order or agreement shall be kept in a file maintained by the
27 director. The list shall be certified as a true representation of the
28 mailing list. Inadvertent failure to notify an affected party does not
29 invalidate a proceeding conducted under this chapter.

30 (5) The list of affected parties that is certified as the true
31 representation of the mailing list of a referendum shall be used to
32 determine assent as provided in this chapter.

33 (6) The director shall provide the commodity board the list of
34 affected and interested parties once a marketing order or agreement is
35 adopted and a commodity board is established as provided in this
36 chapter.

37 NEW SECTION. Sec. 18. A new section is added to chapter 15.65 RCW
38 to read as follows:

1 (1) Pursuant to RCW 42.17.31907, certain agricultural business
2 records, commodity board records, and department of agriculture records
3 relating to commodity boards and producers of agricultural commodities
4 are exempt from public disclosure.

5 (2) Financial and commercial information and records submitted to
6 either the department or a commodity board for the purpose of
7 administering this chapter or a marketing order or agreement may be
8 shared between the department and the applicable commodity board. They
9 may also be used, if required, in any suit or administrative hearing
10 involving this chapter or a marketing order or agreement.

11 (3) This chapter does not prohibit:

12 (a) The issuance of general statements based upon the reports of a
13 number of persons subject to any marketing order or agreement as long
14 as the statements do not identify the information furnished by any
15 person; or

16 (b) The publication by the director or a commodity board of the
17 name of any person violating any marketing order or agreement and a
18 statement of the manner of the violation by that person.

19 NEW SECTION. **Sec. 19.** A new section is added to chapter 15.65 RCW
20 to read as follows:

21 (1) Upon completion of any vote, referendum, or nomination and
22 elections, the department shall tally the results of the vote and
23 provide the results to affected parties.

24 (2) If an affected party disputes the results of a vote, that
25 affected party, within sixty days from the announced results, shall
26 provide in writing a statement of why the vote is disputed and request
27 a recount.

28 (3) Once the vote is tallied and distributed, all disputes are
29 resolved, and all matters in a vote are finalized, the individual
30 ballots may be destroyed.

31 **Sec. 20.** RCW 15.65.220 and 1961 c 256 s 22 are each amended to
32 read as follows:

33 (1) Every marketing agreement and order shall provide for the
34 establishment of a commodity board of not less than five nor more than
35 thirteen members and shall specify the exact number thereof and all
36 details as to (a) qualification, (b) nomination, (c) election or

1 appointment by the director, (d) term of office, and (e) powers,
2 duties, and all other matters pertaining to such board.

3 (2) The members of the board shall be producers or handlers or both
4 in such proportion as the director shall specify in the marketing
5 agreement or order, but in any marketing order or agreement the number
6 of handlers on the board shall not exceed the number of producers
7 thereon. The marketing order or agreement may provide that a majority
8 of the board be appointed by the director, but in any event, no less
9 than one-third of the board members shall be elected by the affected
10 producers.

11 (3) In the event that the marketing order or agreement provides
12 that a majority of the commodity board be appointed by the director,
13 the marketing order or agreement shall incorporate either the
14 provisions of section 24 or 25 of this act for board member selection.

15 (4) The director shall appoint to every ~~((such))~~ board one
16 ~~((person))~~ member who ~~((is neither a producer nor a handler to))~~
17 represents the ~~((department and the public generally))~~ director. The
18 director shall be a voting member of each commodity board.

19 **Sec. 21.** RCW 15.65.230 and 2001 c 315 s 5 are each amended to read
20 as follows:

21 A producer member of each commodity board must be a practical
22 producer of the affected commodity and must be a citizen, resident of
23 this state, and over the age of eighteen years. Each producer board
24 member must be and have been actually engaged in producing such a
25 commodity within the state of Washington for a period of five years and
26 have, during that period, derived a substantial portion of his or her
27 income therefrom and not be engaged in business, directly or
28 indirectly, as a handler or other dealer. A handler member of each
29 board must be a practical handler of the affected commodity and must be
30 a citizen, resident of this state, and over the age of ~~((twenty-five))~~
31 eighteen years. Each handler board member must be and have been,
32 either individually or as an officer or employee of a corporation,
33 firm, partnership, association, or cooperative, actually engaged in
34 handling such a commodity within the state of Washington for a period
35 of five years and have, during that period, derived a substantial
36 portion of his or her income therefrom. The qualification of a member
37 of the board as set forth in this section must continue during the term
38 of office.

1 **Sec. 22.** RCW 15.65.235 and 1971 c 25 s 1 are each amended to read
2 as follows:

3 Whenever any commodity board is formed under the provisions of this
4 chapter and it only affects producers and producer-handlers, then such
5 producer-handlers shall be considered to be acting only as producers
6 for purpose of ((election—and)) membership on a commodity board:
7 PROVIDED, That this section shall not apply to a commodity board which
8 only affects producers and producer-handlers of essential oils.

9 **Sec. 23.** RCW 15.65.240 and 1961 c 256 s 24 are each amended to
10 read as follows:

11 The term of office of board members shall be three years, and one-
12 third as nearly as may be shall be elected or appointed every year:
13 PROVIDED, That at the inception of any agreement or order the entire
14 board shall be elected or appointed one-third for a term of one year,
15 one-third for a term of two years and one-third for a term of three
16 years to the end that memberships on such board shall be on a rotating
17 basis. In the event an order or agreement provides that both producers
18 and handlers shall be members of such board the terms of each type of
19 member shall be so arranged that one-third of the handler members as
20 nearly as may be and one-third of the producer members as nearly as may
21 be shall be elected or appointed each year.

22 Any marketing agreement or order may provide for election or
23 appointment of board members by districts, in which case district lines
24 and the number of board members to be elected or appointed from each
25 district shall be specified in such agreement or order and upon such
26 basis as the director finds to be fair and equitable and reasonably
27 adapted to effectuate the declared policies of this chapter.

28 NEW SECTION. **Sec. 24.** A new section is added to chapter 15.65 RCW
29 to read as follows:

30 (1) This section or section 25 of this act applies when the
31 director appoints a majority of the board positions as set forth under
32 RCW 15.65.220(3).

33 (2) Candidates for director-appointed board positions on a
34 commodity board shall be nominated under RCW 15.65.250.

35 (3) The director shall cause an advisory vote to be held for the
36 director-appointed positions. Not less than ten days in advance of the
37 vote, advisory ballots shall be mailed to all producers or handlers

1 entitled to vote, if their names appear upon the list of affected
2 parties or affected producers or handlers, whichever is applicable.
3 Notice of every advisory vote for board membership shall be published
4 in a newspaper of general circulation within the affected area defined
5 in the order or agreement not less than ten days in advance of the date
6 of the vote. The advisory ballot shall be conducted in a manner so
7 that it is a secret ballot. The names of the two candidates receiving
8 the most votes in the advisory vote shall be forwarded to the director
9 for potential appointment to the board. In the event there are only
10 two candidates nominated for a board position, an advisory vote may not
11 be held and the candidates' names shall be forwarded to the director
12 for potential appointment.

13 (4) The candidates whose names are forwarded to the director for
14 potential appointment shall submit to the director a letter stating why
15 he or she wishes to be appointed to the board. The director may select
16 either person for the position.

17 NEW SECTION. **Sec. 25.** A new section is added to chapter 15.65 RCW
18 to read as follows:

19 (1) This section or section 24 of this act applies when the
20 director appoints a majority of the board positions as set forth under
21 RCW 15.65.220(3).

22 (2) Candidates for director-appointed board positions on a
23 commodity board shall be nominated under RCW 15.65.250.

24 (3) The director shall cause an advisory vote to be held for the
25 director-appointed positions. Not less than ten days in advance of the
26 vote, advisory ballots shall be mailed to all producers or handlers
27 entitled to vote, if their names appear upon the list of affected
28 parties or affected producers or handlers, whichever is applicable.
29 Notice of every advisory vote for board membership shall be published
30 in a newspaper of general circulation within the affected area defined
31 in the order or agreement not less than ten days in advance of the date
32 of the vote. The advisory ballot shall be conducted in a manner so
33 that it is a secret ballot. The name of the candidate receiving the
34 most votes in the advisory vote shall be forwarded to the director for
35 appointment to the commodity board.

36 (4) The director shall appoint the candidate receiving the most
37 votes in an advisory ballot unless the candidate fails to meet the
38 qualifications of commodity board members under this chapter and the

1 marketing order. In the event the director rejects the candidate
2 receiving the most votes, the position is vacant and shall be filled
3 under RCW 15.65.270(2).

4 **Sec. 26.** RCW 15.65.250 and 1987 c 393 s 7 are each amended to read
5 as follows:

6 For the purpose of nominating candidates (~~((to be voted upon))~~) for
7 (~~((election to such))~~) board memberships, the director shall call
8 separate meetings of the affected producers and handlers within the
9 affected area and in case elections shall be by districts (~~((he))~~) the
10 director shall call separate meetings for each district. However, at
11 the inception any marketing agreement or order nominations may be at
12 the issuance hearing. Nomination meetings shall be called annually and
13 at least thirty days in advance of the date set for the election of
14 board members. Notice of every such meeting shall be published in a
15 newspaper of general circulation within the affected area defined in
16 the order or agreement not less than ten days in advance of the date of
17 such meeting and in addition, written notice of every such meeting
18 shall be given to all on the list of affected parties or affected
19 producers and/or handlers (~~((according to the list thereof maintained by~~
20 ~~the director pursuant to RCW 15.65.200))~~), whichever is applicable.
21 However, if the agreement or order provides for election by districts
22 such written notice need be given only to the producers or handlers
23 residing in or whose principal place of business is within such
24 district. Nonreceipt of notice by any interested person shall not
25 invalidate proceedings at such meetings. Any qualified person may be
26 nominated orally for membership upon such board at the said meetings.
27 Nominations may also be made within five days after any such meeting by
28 written petition filed with the director signed by not less than five
29 producers or handlers, as the case may be, entitled to have
30 participated in said meeting.

31 If the board moves and the director approves that the nomination
32 meeting procedure be deleted, the director shall give notice of the
33 vacancy by mail to all affected producers or handlers. The notice
34 shall call for nominations in accordance with the marketing order or
35 agreement and shall give the final date for filing nominations which
36 shall not be less than twenty days after the notice was mailed.

37 Not more than one board member may be part of the same "person" as
38 defined by this chapter. When only one nominee is nominated for any

1 position on the board, the director shall (~~deem that said nominee~~
2 ~~satisfies the requirements of the position and then it shall be deemed~~
3 ~~that said nominee has been duly~~) determine whether the nominee meets
4 the qualifications for the position and, if so, the director shall
5 declare the nominee elected or appoint the nominee to the position.

6 **Sec. 27.** RCW 15.65.260 and 1985 c 261 s 10 are each amended to
7 read as follows:

8 (1) The elected members of every (~~such~~) commodity board shall be
9 elected by secret mail ballot under the supervision of the director.
10 Elected producer members of (~~such~~) the board shall be elected by a
11 majority of the votes cast by the affected producers within the
12 affected area, but if the marketing order or agreement provides for
13 districts such producer members of the board shall be elected by a
14 majority of the votes cast by the affected producers in the respective
15 districts. Each affected producer within the affected area shall be
16 entitled to one vote. Elected handler members of the board shall be
17 elected by a majority of the votes cast by the affected handlers within
18 the affected area, but if the marketing order or agreement provides for
19 districts such handler members of the board shall be elected by a
20 majority of the votes cast by the affected handlers in the respective
21 districts. Each affected handler within the affected area shall be
22 entitled to one vote.

23 If a nominee does not receive a majority of the votes on the first
24 ballot a run-off election shall be held by mail in a similar manner
25 between the two candidates for such position receiving the largest
26 number of votes.

27 (2) Notice of every election for board membership shall be
28 published in a newspaper of general circulation within the affected
29 area defined in the order or agreement not less than ten days in
30 advance of the date of such election. Not less than ten days prior to
31 every election for board membership, the director shall mail a ballot
32 of the candidates to each producer and handler entitled to vote whose
33 name appears upon the list (~~thereof compiled and maintained by the~~
34 ~~director in accordance with RCW 15.65.200~~) of affected parties or
35 affected producers or handlers, whichever is applicable. Any other
36 producer or handler entitled to vote may obtain a ballot by application
37 to the director upon establishing his or her qualifications.

1 Nonreceipt of a ballot by any person entitled to vote shall not
2 invalidate the election of any board member.

3 **Sec. 28.** RCW 15.65.270 and 2001 2nd sp.s. c 6 s 1 are each amended
4 to read as follows:

5 (1) In the event of a vacancy in an elected position on the board,
6 the remaining board members shall select a qualified person to fill the
7 ((unexpired term. A majority of the voting members of the board shall
8 constitute a quorum for the transaction of all business and the
9 carrying out of all duties of the board.)) vacant position for the
10 remainder of the current term or as provided in the marketing order or
11 agreement.

12 (2) In the event of a vacancy on the board in a position appointed
13 by the director, the remaining board members shall recommend to the
14 director a qualified person for appointment to the vacant position.
15 The director shall appoint the person recommended by the board unless
16 the person fails to meet the qualifications of board members under this
17 chapter and the marketing order or agreement.

18 (3) A majority of the voting members of the board shall constitute
19 a quorum for the transaction of all business and the carrying out of
20 all duties of the board.

21 (4) Each member of the board shall be compensated in accordance
22 with RCW 43.03.230. Members and employees of the board may be
23 reimbursed for actual travel expenses incurred in carrying out the
24 provisions of this chapter, as defined under the commodity board's
25 marketing order or agreement. Otherwise, if not defined or referenced
26 in the marketing order or agreement, reimbursement for travel expenses
27 shall be at the rates allowed state employees in accordance with RCW
28 43.03.050 and 43.03.060.

29 **Sec. 29.** RCW 15.65.280 and 2001 c 315 s 6 are each amended to read
30 as follows:

31 The powers and duties of the board shall be:

32 (1) To elect a chairman and such other officers as it deems
33 advisable;

34 (2) To advise and counsel the director with respect to the
35 administration and conduct of such marketing agreement or order;

- 1 (3) To recommend to the director administrative rules(~~(7~~
2 ~~regulations~~)) and orders and amendments thereto for the exercise of his
3 or her powers in connection with such agreement or order;
- 4 (4) To advise the director upon any and all assessments provided
5 pursuant to the terms of such agreement or order and upon the
6 collection, deposit, withdrawal, disbursement and paying out of all
7 moneys;
- 8 (5) To assist the director in the collection of such necessary
9 information and data as the director may deem necessary in the proper
10 administration of this chapter;
- 11 (6) To administer the order or agreement as its administrative
12 board if the director designates it so to do in such order or
13 agreement;
- 14 (7) To work cooperatively with other local, state, and federal
15 agencies; universities; and national organizations for the purposes
16 provided in the board's marketing order or agreement;
- 17 (8) To enter into contracts or interagency agreements with any
18 private or public agency, whether federal, state, or local, to carry
19 out the purposes provided in the board's marketing order or agreement.
20 Personal service contracts must comply with chapter 39.29 RCW;
- 21 (9) To accept and expend or retain any gifts, bequests,
22 contributions, or grants from private persons or private and public
23 agencies to carry out the purposes provided in the board's marketing
24 order or agreement;
- 25 (10) To retain in emergent situations the services of private legal
26 counsel to conduct legal actions on behalf of a board. The retention
27 of a private attorney is subject to review by the office of the
28 attorney general;
- 29 (11) To engage in appropriate fund-raising activities for the
30 purpose of supporting activities of the board authorized by the
31 marketing order or agreement;
- 32 (12) To enter into contracts or agreements for research in the
33 production, irrigation, processing, transportation, marketing, use, or
34 distribution of an affected commodity;
- 35 (13) To participate in international, federal, state, and local
36 hearings, meetings, and other proceedings relating to the production,
37 irrigation, manufacture, regulation, transportation, distribution,
38 sale, or use of affected commodities including activities authorized

1 under RCW 42.17.190, including the reporting of those activities to the
2 public disclosure commission; ((and))

3 (14) To maintain a list of the names and addresses of affected
4 producers that may be compiled from information used to collect
5 assessments under the marketing order or agreement, and data on the
6 value of each producer's production for a minimum three-year period;

7 (15) To maintain a list of the names and addresses of persons who
8 handle the affected commodity within the affected area and data on the
9 amount and value of the commodity handled for a minimum three-year
10 period by each person; and

11 (16) To perform such other duties as the director may prescribe in
12 the marketing agreement or order.

13 Any agreement or order under which the commodity board administers
14 the order or agreement shall (if so requested by the affected producers
15 within the affected area in the proposal or promulgation hearing)
16 contain provisions whereby the director reserves the power to approve
17 or disapprove every order, rule or directive issued by the board, in
18 which event such approval or disapproval shall be based on whether or
19 not the director believes the board's action has been carried out in
20 conformance with the purposes of this chapter.

21 NEW SECTION. Sec. 30. A new section is added to chapter 15.65 RCW
22 to read as follows:

23 (1) Each commodity board shall prepare a list of all affected
24 producers from any information available from the department,
25 producers, producer associations or organizations, or handlers of the
26 affected commodity. This list shall contain the names and addresses of
27 all affected persons who produce the affected commodity and the amount,
28 by unit, of the affected commodity produced during at least the past
29 three years.

30 (2) Each commodity board shall prepare a list of all persons who
31 handle the affected commodity and the amount of the commodity handled
32 by each person during at least the past three years.

33 (3) It is the responsibility of all affected parties to ensure that
34 their correct address is filed with the commodity board. It is also
35 the responsibility of affected parties to submit production data and
36 handling data to the commodity board as prescribed by the board's
37 marketing order or agreement.

1 (4) Any qualified person may, at any time, have his or her name
2 placed upon any list for which he or she qualifies by delivering or
3 mailing the information to the commodity board. The lists shall be
4 corrected and brought up-to-date in accordance with evidence and
5 information provided to the commodity board.

6 (5) At the director's request, the commodity board shall provide
7 the director a list of affected producers or handlers that is certified
8 by the commodity board to be complete according to the commodity
9 board's records. The list shall contain all information required by
10 the director to conduct a referendum or board member election or
11 selection under this chapter and the marketing order or agreement.

12 (6) For all purposes of giving notice, holding referenda, and
13 electing or selecting members of a commodity board, the applicable list
14 corrected up to the day preceding the date the list is certified by the
15 commodity board and mailed to the director is deemed to be the list of
16 all affected producers or affected handlers, as applicable, entitled to
17 notice or to vote. Inadvertent failure to notify an affected producer
18 or handler does not invalidate a proceeding conducted under this
19 chapter.

20 NEW SECTION. **Sec. 31.** A new section is added to chapter 15.65 RCW
21 to read as follows:

22 Agricultural commodity boards shall adopt rules governing
23 promotional hosting expenditures by commodity board employees, agents,
24 or board members under RCW 15.04.200.

25 **Sec. 32.** RCW 15.65.375 and 1988 c 54 s 1 are each amended to read
26 as follows:

27 Any marketing agreement or order may authorize the members of a
28 commodity board, or their agents or designees, to participate in
29 federal or state hearings or other proceedings concerning regulation of
30 the manufacture, distribution, sale, or use of any pesticide as defined
31 by RCW 15.58.030(~~(+1)~~) (30) or any agricultural chemical which is of
32 use or potential use in producing the affected commodity. Any
33 marketing agreement or order may authorize the expenditure of commodity
34 board funds for this purpose.

35 **Sec. 33.** RCW 15.65.380 and 1961 c 256 s 38 are each amended to
36 read as follows:

1 Any marketing agreement or order may contain any other, further,
2 and different provisions which are incidental to and not inconsistent
3 with this chapter and which the director finds to be needed and
4 reasonably adapted to effectuate the declared policies of this chapter.
5 ((Such)) The provisions shall set forth the detailed application of
6 this chapter to the affected agricultural commodity. ((The director or
7 his designee shall have the power to make rules and regulations of a
8 technical or administrative nature under this chapter and/or under any
9 agreement or order issued pursuant to this chapter.))

10 **Sec. 34.** RCW 15.65.430 and 1961 c 256 s 43 are each amended to
11 read as follows:

12 Any moneys collected or received by the director or his or her
13 designee pursuant to the provisions of any marketing agreement or order
14 during or with respect to any season or year may be refunded on a pro
15 rata basis at the close of such season or year or at the close of such
16 longer period as the director determines to be reasonably adapted to
17 effectuate the declared policies of this chapter and the purposes of
18 such marketing agreement or order, to all persons from whom such moneys
19 were collected or received, or may be carried over into and used with
20 respect to the next succeeding season, year or period whenever the
21 director or ((his)) a designee finds that the same will tend to
22 effectuate such policies and purposes. ((Upon the termination of any
23 marketing agreement or order, any and all moneys remaining, and not
24 required to defray the expenses or repay the obligations incurred and
25 undertaken pursuant to such agreement or order, shall be returned by
26 the director upon a pro rata basis to all persons from whom such moneys
27 were collected or received. However, if the director finds that the
28 amounts so returnable are so small as to make impractical the
29 computation and remitting of such pro rata refund to such persons, the
30 director may use such moneys to defray expenses incurred by him in the
31 formulation, issuance, administration or enforcement of any subsequent
32 marketing agreement or order for such commodity. Thereafter, if there
33 are any such moneys remaining which have not been used by the director
34 as hereinabove provided, the same shall be withdrawn from the approved
35 depository and paid into the state treasury as unclaimed trust
36 moneys.))

1 **Sec. 35.** RCW 15.65.450 and 1961 c 256 s 45 are each amended to
2 read as follows:

3 Prior to the issuance of any marketing agreement or order, the
4 director may require the applicants therefor to deposit with him or her
5 such amount of money as the director may deem necessary to defray the
6 expenses of preparing and making effective such agreement or order.
7 ~~((The director or his designee may reimburse the applicant from any~~
8 ~~moneys received by him under such agreement or order for any moneys so~~
9 ~~deposited by such applicant and/or for any necessary expenses incurred~~
10 ~~by such applicant in preparing and obtaining approval of such marketing~~
11 ~~agreement or order upon receipt of a verified statement of such expense~~
12 ~~approved by the director or his designee.))~~

13 (1) A commodity board shall reimburse the department for expenses
14 incurred by the department when a commodity board petitions the
15 director to amend or terminate a marketing order or agreement and for
16 other services provided by the department under this chapter. The
17 department shall provide to a commodity board an estimate of expenses
18 that may be incurred to amend or terminate a marketing order or
19 agreement prior to any services taking place.

20 (2) Petitioners who are not a majority of a commodity board, and
21 who file a petition with the director to issue, amend, or terminate a
22 marketing order or agreement, shall deposit funds with the director to
23 pay for expenses incurred by the department, under rules adopted by the
24 director.

25 (3) A commodity board shall reimburse petitioners the amount paid
26 to the department under the following circumstances:

27 (a) If the petition is to issue a marketing order or agreement, the
28 commodity board shall reimburse the petitioners the amount expended by
29 the department when funds become available after establishment of the
30 commodity board; or

31 (b) If the petition is to amend or terminate a marketing order or
32 agreement and the proposal is assented to by the affected parties or
33 affected producers, the commodity board shall reimburse the petitioners
34 within thirty days of the referendum.

35 (4) If for any reason a proceeding is discontinued, the commodity
36 board or petitioners, whichever is applicable, shall only reimburse the
37 department for expenses incurred by the department up until the time
38 the proceeding is discontinued.

1 **Sec. 36.** RCW 15.65.570 and 1961 c 256 s 57 are each amended to
2 read as follows:

3 ~~(1) All proceedings ((held by the director for the promulgation of~~
4 ~~any marketing agreement or order and the amendment, modification, or~~
5 ~~dissolution thereof and all proceedings concerning the promulgation of~~
6 ~~any rules or regulations or the amendment or modification thereof and~~
7 ~~appeals therefrom))~~ conducted under this chapter shall be subject to
8 the provisions of chapter 34.05 RCW ~~((as enacted or hereafter amended))~~
9 unless otherwise provided for in this chapter.

10 (2) Rule-making proceedings conducted under this chapter are exempt
11 from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory
12 fairness act, and RCW 43.135.055 when the adoption of the rules is
13 determined by a referendum vote of the affected parties.

14 NEW SECTION. **Sec. 37.** The following acts or parts of acts are
15 each repealed:

16 (1) RCW 15.65.030 (Declaration of purpose and police power) and
17 1961 c 256 s 3;

18 (2) RCW 15.65.080 (Hearings public--Oaths--Record--Administrative
19 law judge, powers) and 1981 c 67 s 18 & 1961 c 256 s 8;

20 (3) RCW 15.65.460 (Marketing act revolving fund--Composition) and
21 1961 c 256 s 46; and

22 (4) RCW 15.65.405 (Annual assessment in excess of the fiscal growth
23 factor under chapter 43.135 RCW--Hop commodity board--Mint commodity
24 board) and 1995 c 109 s 1.

25 NEW SECTION. **Sec. 38.** A new section is added to chapter 15.66 RCW
26 to read as follows:

27 The history, economy, culture, and the future of Washington state
28 to a large degree all involve agriculture. In order to develop and
29 promote Washington's agricultural products as part of the existing
30 comprehensive scheme to regulate agricultural commodities, the
31 legislature declares:

32 (1) That the marketing of agricultural products within this state
33 is in the public interest. It is vital to the continued economic well-
34 being of the citizens of this state and their general welfare that its
35 agricultural commodities be properly promoted by (a) enabling producers
36 of agricultural commodities to help themselves in establishing orderly,
37 fair, sound, efficient, and unhampered marketing, grading, and

1 standardizing of the commodities they produce; and (b) working towards
2 stabilizing the agricultural industry by increasing consumption of
3 agricultural commodities within the state, the nation, and
4 internationally;

5 (2) That farmers and ranchers operate within a regulatory
6 environment that imposes burdens on them for the benefit of society and
7 the citizens of the state and includes restrictions on marketing
8 autonomy. Those restrictions may impair the agricultural producer's
9 ability to compete in local, domestic, and foreign markets;

10 (3) That it is now in the overriding public interest that support
11 for the agricultural industry be clearly expressed, that adequate
12 protection be given to agricultural commodities, uses, activities, and
13 operations, and that each agricultural commodity be promoted
14 individually, and as part of a comprehensive industry to:

15 (a) Enhance the reputation and image of Washington state's
16 agricultural commodities;

17 (b) Increase the sale and use of Washington state's agricultural
18 commodities in local, domestic, and foreign markets;

19 (c) Protect the public by educating the public in reference to the
20 quality, care, and methods used in the production of Washington state's
21 agricultural commodities;

22 (d) Increase the knowledge of the health-giving qualities and
23 dietetic value of Washington state's agricultural commodities and
24 products; and

25 (e) Support and engage in programs or activities that benefit the
26 planting, production, harvesting, handling, processing, marketing, and
27 uses of agricultural commodities produced in Washington state;

28 (4) That the director seek to enhance, protect, and perpetuate the
29 ability of the private sector to produce food and fiber, and seek to
30 maintain the economic well-being of the agricultural industry in
31 Washington state consistent with its regulatory activities and
32 responsibilities;

33 (5) That the director is hereby authorized to implement,
34 administer, and enforce this chapter through the adoption of marketing
35 orders that establish commodity commissions; and

36 (6) That this chapter is enacted in the exercise of the police
37 powers of this state for the purpose of protecting the health, peace,
38 safety, and general welfare of the people of this state.

1 **Sec. 39.** RCW 15.66.010 and 1993 c 80 s 3 are each amended to read
2 as follows:

3 For the purposes of this chapter:

4 (1) "Director" means the director of agriculture of the state of
5 Washington or any qualified person or persons designated by the
6 director of agriculture to act for him or her concerning some matter
7 under this chapter.

8 (2) "Department" means the department of agriculture of the state
9 of Washington.

10 (3) "Marketing order" means an order (~~(issued)~~) adopted by rule by
11 the director that establishes a commodity commission for an
12 agricultural commodity pursuant to this chapter.

13 (4) "Agricultural commodity" means any of the following commodities
14 or products: Llamas, alpacas, or any other animal or any distinctive
15 type of agricultural, horticultural, viticultural, vegetable, and/or
16 animal product, including, but not limited to, products qualifying as
17 organic food products under chapter 15.86 RCW and private sector
18 cultured aquatic products as defined in RCW 15.85.020 and other fish
19 and fish products, within its natural or processed state, including
20 beehives containing bees and honey and Christmas trees but not
21 including timber or timber products. The director is authorized to
22 determine what kinds, types or subtypes should be classed together as
23 an agricultural commodity for the purposes of this chapter.

24 (5) "Producer" means any person engaged in the business of
25 producing or causing to be produced for market in commercial quantities
26 any agricultural commodity. "To produce" means to act as a producer.
27 For the purposes of (~~RCW 15.66.060, 15.66.090, and 15.66.120, as now~~
28 ~~or hereafter amended~~) this chapter, "producer" shall include bailees
29 who contract to produce or grow any agricultural product on behalf of
30 a bailor who retains title to the seed and its resulting agricultural
31 product or the agricultural product delivered for further production or
32 increase.

33 (6) "Affected producer" means any producer (~~(of an affected~~
34 ~~commodity)) who is subject to a marketing order.~~

35 (7) "Affected commodity" means (~~(any agricultural commodity for~~
36 ~~which the director has established a list of producers pursuant to RCW~~
37 ~~15.66.060)) the agricultural commodity that is specified in the
38 marketing order.~~

1 (8) "Commodity commission" or "commission" means a commission
2 formed to carry out the purposes of this chapter under a particular
3 marketing order concerning an affected commodity.

4 (9) "Unit" means a unit of volume, quantity or other measure in
5 which an agricultural commodity is commonly measured.

6 (10) "Unfair trade practice" means any practice which is unlawful
7 or prohibited under the laws of the state of Washington including but
8 not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77,
9 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning
10 interstate or intrastate commerce that is unlawful under the provisions
11 of the act of Congress of the United States, September 26, 1914,
12 chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known
13 as the "Federal Trade Commission Act of 1914", or the violation of or
14 failure accurately to label as to grades and standards in accordance
15 with any lawfully established grades or standards or labels.

16 (11) "Person" includes any individual, firm, corporation, limited
17 liability company, trust, association, partnership, society, or any
18 other organization of individuals or any unit or agency of local,
19 state, or federal government.

20 (12) "Cooperative association" means any incorporated or
21 unincorporated association of producers which conforms to the
22 qualifications set out in the act of Congress of the United States,
23 Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large
24 388 as amended, known as the "Capper-Volstead Act" and which is engaged
25 in making collective sales or in marketing any agricultural commodity
26 or product thereof or in rendering service for or advancing the
27 interests of the producers of such commodity on a nonprofit cooperative
28 basis.

29 (13) "Member of a cooperative association" or "member" means any
30 producer of an agricultural commodity who markets his or her product
31 through such cooperative association and who is a voting stockholder of
32 or has a vote in the control of or is under a marketing agreement with
33 such cooperative association with respect to such product.

34 (14) "Affected handler" means any handler of an affected commodity.

35 (15) "Affected parties" means any producer, affected producer,
36 handler, or commodity commission member.

37 (16) "Assessment" means the monetary amount established in a
38 marketing order that is to be paid by each affected producer to a

1 commission in accordance with the schedule established in the marketing
2 order.

3 (17) "Mail" or "send," for purposes of any notice relating to rule
4 making, referenda, or elections, means regular mail or electronic
5 distribution, as provided in RCW 34.05.260 for rule making.

6 "Electronic distribution" or "electronically" means distribution by
7 electronic mail or facsimile mail.

8 (18) "Handler" means any person who acts, either as principal,
9 agent, or otherwise, in the processing, selling, marketing, or
10 distributing of an agricultural commodity that is not produced by the
11 handler. "Handler" does not include a common carrier used to transport
12 an agricultural commodity. "To handle" means to act as a handler.

13 (19) "List of affected parties" means a list containing the names
14 and mailing addresses of affected parties. This list must contain the
15 names and addresses of all affected parties and, if requested by the
16 director, the amount, by unit, of the affected commodity produced
17 during a designated period under this chapter.

18 (20) "List of affected producers" means a list containing the names
19 and mailing addresses of affected producers. This list must contain
20 the names and addresses of all affected producers and, if requested by
21 the director, the amount, by unit, of the affected commodity produced
22 during a designated period under this chapter.

23 (21) "List of affected handlers" means a list containing the names
24 and addresses of affected handlers. This list must contain the names
25 and addresses of all affected handlers and, if requested by the
26 director, the amount, by unit, of the affected commodity handled during
27 a designated period under this chapter.

28 (22) "Percent by numbers" means the percent of those persons on the
29 list of affected parties or affected producers.

30 (23) "Referendum" means a vote by the affected parties or affected
31 producers which is conducted by secret ballot.

32 (24) "Rule-making proceedings" means rule making under chapter
33 34.05 RCW.

34 (25) "Vacancy" means that a commission member leaves or is removed
35 from a position on the commission prior to the end of a term, or a
36 nomination process for the beginning of a term concludes with no
37 candidates for a position.

38 (26) "Volume of production" means the percent of the average volume
39 of production of the affected commodity of those on the list of

1 affected parties or affected producers for a production period. For
2 the purposes of this chapter, a production period is a minimum three-
3 year period or as specified in the marketing order.

4 **Sec. 40.** RCW 15.66.030 and 2001 c 315 s 1 are each amended to read
5 as follows:

6 Marketing orders may be made for any one or more of the following
7 purposes:

8 (1) To establish plans and conduct programs for advertising and
9 sales promotion, to maintain present markets, or to create new or
10 larger markets for any agricultural commodity grown in the state of
11 Washington;

12 (2) To provide for carrying on research studies to find more
13 efficient methods of production, irrigation, processing,
14 transportation, handling, and marketing of any agricultural commodity;

15 (3) To provide for improving standards and grades by defining,
16 establishing, and providing labeling requirements with respect to the
17 same;

18 (4) To investigate and take necessary action to prevent unfair
19 trade practices;

20 (5) To provide information or communicate on matters pertaining to
21 the production, irrigation, processing, transportation, marketing, or
22 uses of an agricultural commodity produced in Washington state to any
23 elected official or officer or employee of any agency;

24 (6) To provide marketing information and services for producers of
25 an agricultural commodity;

26 (7) To provide information and services for meeting resource
27 conservation objectives of producers of an agricultural commodity;

28 (8) To engage in cooperative efforts in the domestic or foreign
29 marketing of food products of an agricultural commodity; and

30 (9) To provide for commodity-related education and training.

31 NEW SECTION. **Sec. 41.** A new section is added to chapter 15.66 RCW
32 to read as follows:

33 This chapter and the rules adopted under it are only one aspect of
34 the comprehensively regulated agricultural industry.

35 (1) Other laws applicable to agricultural commodities include the
36 following chapters and the rules adopted thereunder:

37 Chapter 15.08 RCW Horticultural pests and diseases;

1 Chapter 15.13 RCW Horticultural plants and facilities--Inspection
2 and licensing;
3 Chapter 15.14 RCW Planting stock;
4 Chapter 15.15 RCW Certified seed potatoes;
5 Chapter 15.17 RCW Standards of grades and packs;
6 Chapter 15.19 RCW Certification and inspection of ginseng;
7 Chapter 15.30 RCW Controlled atmosphere storage of fruits and
8 vegetables;
9 Chapter 15.49 RCW Seeds;
10 Chapter 15.53 RCW Commercial feed;
11 Chapter 15.54 RCW Fertilizers, minerals, and limes;
12 Chapter 15.58 RCW Washington pesticide control act;
13 Chapter 15.60 RCW Apiaries;
14 Chapter 15.64 RCW Farm marketing;
15 Chapter 15.83 RCW Agricultural marketing and fair practices;
16 Chapter 15.85 RCW Aquaculture marketing;
17 Chapter 15.86 RCW Organic food products;
18 Chapter 15.92 RCW Center for sustaining agriculture and natural
19 resources;
20 Chapter 17.24 RCW Insect pests and plant diseases;
21 Chapter 19.94 RCW Weights and measures;
22 Chapter 20.01 RCW Agricultural products--Commission merchants,
23 dealers, brokers, buyers, agents;
24 Chapter 22.09 RCW Agricultural commodities;
25 Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including
26 provisions of 21 C.F.R. relating to the general manufacturing
27 practices, food labeling, food standards, food additives, and pesticide
28 tolerances;
29 Chapter 69.07 RCW Washington food processing act;
30 Chapter 69.25 RCW Washington wholesome eggs and egg products act;
31 Chapter 69.28 RCW Honey;
32 7 U.S.C., section 136, Federal Insecticide, Fungicide, and
33 Rodenticide Act.
34 (2) In addition to the laws and regulations listed in subsection
35 (1) of this section that apply to the agricultural industry as a whole,
36 the potato industry is regulated by or must comply with the following
37 additional laws and the rules or regulations adopted thereunder:
38 (a) 7 C.F.R., Part 51, United States standards for grades of
39 potatoes;

1 (b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes
2 grown in Washington;

3 (c) 7 C.F.R., Part 1207, Potato research and promotion plan.

4 (3) In addition to the laws and regulations listed in subsection
5 (1) of this section that apply to the agricultural industry as a whole,
6 the wheat and barley industries are regulated by or must comply with
7 the following additional laws and the rules adopted thereunder:

8 (a) 7 U.S.C., section 1621, Agricultural Marketing Act;

9 (b) Chapter 70.94 RCW, Washington clean air act, agricultural
10 burning.

11 (4) In addition to the laws and regulations listed in subsection
12 (1) of this section that apply to the agricultural industry as a whole,
13 the poultry industry is regulated by or must comply with the following
14 additional laws and the rules adopted thereunder:

15 (a) 21 U.S.C., chapter 10, Poultry and poultry products inspection;

16 (b) 21 U.S.C., chapter 9, Packers and stockyards;

17 (c) 7 U.S.C., section 1621, Agricultural Marketing Act;

18 (d) Washington fryer commission labeling standards.

19 **Sec. 42.** RCW 15.66.050 and 1961 c 11 s 15.66.050 are each amended
20 to read as follows:

21 (1) Petitions for issuance, amendment or termination of a marketing
22 order shall be signed by not less than five percent or one hundred of
23 the producers alleged to be affected, whichever is less, and shall be
24 filed with the director. ~~((Such petition shall be accompanied by a
25 filing fee of one hundred dollars payable to the state treasurer; and
26 shall designate some person as attorney in fact for the purpose of this
27 section. Upon receipt of such a petition, the director shall prepare
28 a budget estimate for handling such petition which shall include the
29 cost of the preparation of the estimate, the cost of the hearings and
30 the cost of the proposed referendum. The petitioners, within thirty
31 days after receipt of the budget estimate by their attorney in fact
32 shall remit to the director the difference between the filing fee of
33 one hundred dollars already paid and the total budget estimate. If the
34 petitioners fail to remit the difference, or if for any other reason
35 the proceedings for the issuance, amendment or termination of the
36 marketing order are discontinued, the filing fee, including any
37 additional amount paid in accordance with such budget estimates shall
38 not be refunded. If the petition results, after proper proceedings, in~~

1 ~~the issuance, amendment, or termination of a marketing order, said~~
2 ~~petitioners shall be reimbursed for the amount paid for said total~~
3 ~~filing fee out of funds of the commodity commission as they become~~
4 ~~available.)) A petition for amendment or termination of a marketing
5 order may be submitted to the director by majority vote of a
6 commission.~~

7 (2) A commission shall reimburse the department for expenses
8 incurred by the department when a commodity commission petitions the
9 director to amend or terminate a marketing order and for other services
10 provided by the department under this chapter. The department shall
11 provide to a commodity commission an estimate of expenses that may be
12 incurred to amend or terminate a marketing order prior to any services
13 taking place.

14 (3) Petitioners who are not a majority of a commission, and who
15 file a petition with the director to issue, amend, or terminate a
16 marketing order, shall deposit funds with the director to pay for
17 expenses incurred by the department, under rules adopted by the
18 director.

19 (4) A commission shall reimburse petitioners the amount paid to the
20 department under the following circumstances:

21 (a) If the petition is to issue a marketing order, the commission
22 shall reimburse the petitioners the amount expended by the department
23 when funds become available after establishment of the commission; or

24 (b) If the petition is to amend or terminate a marketing order, the
25 commission shall reimburse the petitioners within thirty days of the
26 referendum if the proposal is assented to by the affected producers.

27 (5) If for any reason a proceeding is discontinued, the commission
28 or petitioners, whichever is applicable, shall reimburse the department
29 only for expenses incurred by the department up until the time the
30 proceeding is discontinued.

31 NEW SECTION. Sec. 43. A new section is added to chapter 15.66 RCW
32 to read as follows:

33 (1) All rule-making proceedings conducted under this chapter shall
34 be in accordance with chapter 34.05 RCW.

35 (2) Rule-making proceedings conducted under this chapter are exempt
36 from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory
37 fairness act, and RCW 43.135.055 when adoption of the rule is
38 determined by a referendum vote of the affected parties.

1 (3) The director may adopt amendments to marketing orders without
2 conducting a referendum if the amendments are adopted under the
3 following criteria:

4 (a) The proposed amendments relate only to internal administration
5 of a marketing order and are not subject to violation by a person;

6 (b) The proposed amendments adopt or incorporate by reference
7 without material change federal statutes or regulations, Washington
8 state statutes, or rules of other Washington state agencies, if the
9 material adopted or incorporated regulates the same activities as are
10 authorized under the marketing order;

11 (c) The proposed amendments only correct typographical errors, make
12 address or name changes, or clarify language of a rule without changing
13 the marketing order;

14 (d) The content of the proposed amendments is explicitly and
15 specifically dictated by statute.

16 A marketing order shall not be amended without a referendum to
17 provide that a majority of the commodity commission members be
18 appointed by the director.

19 NEW SECTION. **Sec. 44.** A new section is added to chapter 15.66 RCW
20 to read as follows:

21 The director may adopt rules necessary to carry out the director's
22 duties and responsibilities under this chapter including:

23 (1) The issuance, amendment, suspension, or termination of
24 marketing orders;

25 (2) Procedural, technical, or administrative rules which may
26 address and include, but are not limited to:

27 (a) The submission of a petition to issue, amend, or terminate a
28 marketing order under this chapter;

29 (b) Nominations conducted under this chapter;

30 (c) Elections of commission members or referenda conducted under
31 this chapter; and

32 (d) Actions of the director upon a petition to issue, amend, or
33 terminate a marketing order;

34 (3) Rules that provide for a method to fund:

35 (a) The costs of staff support for all commodity boards and
36 commissions in accordance with section 78 of this act if the position
37 is not directly funded by the legislature; and

1 (b) The actual costs related to the specific activity undertaken on
2 behalf of an individual commodity board or commission.

3 **Sec. 45.** RCW 15.66.060 and 1975 1st ex.s. c 7 s 7 are each amended
4 to read as follows:

5 (1) Upon receipt of a petition for the issuance(~~(, amendment, or~~
6 ~~termination))~~ of a marketing order, the director shall establish a list
7 of ~~((producers))~~ affected parties of the agricultural commodity
8 affected ~~((or make any such existing list current))~~. In establishing
9 ~~((or making current such))~~ a list of ~~((producers))~~ affected parties and
10 their individual production, the director shall publish a notice to
11 producers of the commodity to be affected requiring them to file with
12 the director a report showing the producer's name, mailing address, and
13 the yearly average quantity of the affected commodity produced by him
14 or her in the three years preceding the date of the notice or in such
15 lesser time as the producer has produced the commodity in question.
16 ~~((Such))~~ Information as to production may also be accepted from other
17 valid sources if readily available. ~~((The notice shall be published~~
18 ~~once a week for four consecutive weeks in such newspaper or newspapers,~~
19 ~~including a newspaper or newspapers of general circulation within the~~
20 ~~affected areas, as the director may prescribe, and shall be mailed to~~
21 ~~all affected producers on record with the director. All reports shall~~
22 ~~be filed with the director within twenty days from the last date of~~
23 ~~publication of the notice or within thirty days after the mailing of~~
24 ~~the notice to affected producers, whichever is the later. The director~~
25 ~~shall keep such lists at all times as current as possible and may~~
26 ~~require information from affected producers at various times in~~
27 ~~accordance with rules and regulations prescribed by the director:~~
28 ~~PROVIDED, That any commission established under the provisions of this~~
29 ~~chapter may at its discretion prior to any election for any purpose by~~
30 ~~such commission carry out the above stated mandate to the director for~~
31 ~~establishing a list of producers and their individual production, and~~
32 ~~supply the director with a current list of all producers subject to the~~
33 ~~provisions of the marketing order under which it was formed.~~

34 ~~Such producer list shall be final and conclusive in making~~
35 ~~determinations relative to the assent by producers upon the issuance,~~
36 ~~amendment or termination of a marketing order and in elections under~~
37 ~~the provisions of this chapter.~~

1 ~~The director shall then notify affected producers, so listed, by~~
2 ~~mail that the public hearing affording opportunity for them to be heard~~
3 ~~upon the proposed issuance, amendment, or termination of the marketing~~
4 ~~order will be heard at the time and place stated in the notice. Such~~
5 ~~notice of the hearing shall be given not less than ten days nor more~~
6 ~~than sixty days prior to the hearing.)) Notice of a proposed marketing~~
7 ~~order issuance shall be as provided for in RCW 15.66.070.~~

8 (2) The director shall use the list of affected parties for the
9 purpose of notice, referendum proceedings, and electing or selecting
10 members of the commission in accordance with this chapter and rules
11 adopted under this chapter.

12 (3) An affected party may at any time file his or her name and
13 mailing address with the director. A list of affected parties may be
14 brought up-to-date by the director up to the day preceding a mailing of
15 a notice or ballot under this chapter and that list is deemed the list
16 of affected parties entitled to vote.

17 (4) The list of affected parties shall be kept in the rule-making
18 file by the director. The list shall be certified as a true
19 representation of the referendum mailing list. Inadvertent failure to
20 notify an affected party does not invalidate a proceeding conducted
21 under this chapter.

22 (5) The list of affected parties that is certified as the true
23 representation of the mailing list of a referendum shall be used to
24 determine assent as provided in this chapter.

25 (6) The director shall provide the commodity commission the list of
26 affected and interested parties once a marketing order is adopted and
27 a commodity commission is established as provided in this chapter.

28 **Sec. 46.** RCW 15.66.070 and 1961 c 11 s 15.66.070 are each amended
29 to read as follows:

30 (1) Notice of a public hearing to issue, amend, or terminate a
31 marketing order shall be published once a week for four consecutive
32 weeks in a newspaper or newspapers, including a newspaper or newspapers
33 of general circulation within the affected areas, as the director may
34 prescribe, and shall be mailed to all affected parties or affected
35 producers. The director shall mail notice to all affected parties or
36 affected producers, as applicable, who may be directly affected by the
37 proposal and whose names and addresses appear on the list compiled
38 under this chapter.

1 (2) At ~~((the))~~ a public hearing the director shall receive
2 ~~((evidence and))~~ testimony offered in support of, or opposition to, the
3 proposed issuance of, amendment to, or termination of a marketing order
4 and concerning the terms, conditions, scope, and area thereof. Such
5 hearing shall be public and all testimony shall be received under oath.
6 A full and complete record of all proceedings at such hearings shall be
7 made and maintained on file in the office of the director, which file
8 shall be open to public inspection. The director shall base ~~((his))~~
9 any findings upon the testimony ~~((and evidence))~~ received at the
10 hearing, together with any other relevant facts available ~~((to him))~~
11 from official publications of institutions of recognized standing. The
12 director shall describe in ~~((his))~~ the findings such official
13 publications upon which any finding is based.

14 ~~((For such hearings and for any other hearings under this
15 chapter,))~~ (3) The director shall have the power to subpoena witnesses
16 and to issue subpoenas for the production of any books, records, or
17 documents of any kind.

18 (4) The superior court of the county in which any hearing or
19 proceeding may be had may compel the attendance of witnesses and the
20 production of records, papers, books, accounts, documents and testimony
21 as required by such subpoena. The director, in case of the refusal of
22 any witness to attest or testify or produce any papers required by the
23 subpoena, shall report to the superior court of the county in which the
24 proceeding is pending by petition setting forth that due notice has
25 been given of the time and place of attendance of ~~((said))~~ the witness
26 or the production of ~~((said))~~ the papers and that the witness has been
27 summoned in the manner prescribed in this chapter and that he or she
28 has failed to attend or produce the papers required by the subpoena at
29 the hearing, cause or proceeding specified in the subpoena, or has
30 refused to answer questions propounded to him or her in the course of
31 such hearing, cause, or proceeding, and shall ask an order of the court
32 to compel a witness to appear and testify before the director. The
33 court upon such petition shall enter an order directing the witness to
34 appear before the court at a time and place to be fixed in such order
35 and then and there to show cause why he or she has not responded to the
36 subpoena. A copy of the order shall be served upon the witness. If it
37 appears to the court that the subpoena was regularly issued, it shall
38 enter an order that the witness appear at the time and place fixed in
39 the order and testify or produce the required papers, and on failing to

1 obey (~~said~~) the order the witness shall be dealt with as for contempt
2 of court.

3 **Sec. 47.** RCW 15.66.090 and 1975 1st ex.s. c 7 s 8 are each amended
4 to read as follows:

5 After the issuance by the director of the final decision approving
6 the issuance, amendment, or termination of a marketing order, the
7 director shall determine by a referendum whether the affected parties
8 or producers assent to the proposed action or not. The director shall
9 conduct the referendum among the affected parties or producers based on
10 the list as provided for in RCW 15.66.060, and the affected parties or
11 producers shall be deemed to have assented to the proposed issuance or
12 termination order if fifty-one percent or more by number reply to the
13 referendum within the time specified by the director, and if, of those
14 replying, sixty-five percent or more by number and fifty-one percent or
15 more by volume assent to the proposed order. The producers shall be
16 deemed to have assented to the proposed amendment order if sixty
17 percent or more by number and sixty percent or more by volume of those
18 replying assent to the proposed order. The determination by volume
19 shall be made on the basis of volume as determined in the list of
20 affected producers created under provisions of RCW 15.66.060, subject
21 to rules and regulations of the director for such determination. The
22 director shall consider the approval or disapproval of any cooperative
23 marketing association authorized by its producer members to act for
24 them in any such referendum, as being the approval or disapproval of
25 the producers who are members of or stockholders in or under contract
26 with such association of cooperative producers: PROVIDED, That the
27 association shall first determine that a majority of the membership of
28 the association authorize its action concerning the specific marketing
29 order. If the requisite assent is given, the director shall promulgate
30 the order and shall mail notices of the same to all affected producers.

31 NEW SECTION. **Sec. 48.** A new section is added to chapter 15.66 RCW
32 to read as follows:

33 The director may, upon the request of a commodity commission and
34 without compliance with RCW 15.66.070 through 15.66.090, suspend the
35 commission's order or term or provision thereof for a period of not to
36 exceed one year, if the director finds that the suspension will tend to
37 effectuate the declared policy of this chapter. Any suspension of all,

1 or substantially all, of a marketing order by the director is not
2 effective until the end of the then current marketing season.

3 NEW SECTION. **Sec. 49.** A new section is added to chapter 15.66 RCW
4 to read as follows:

5 The director is not required to hold a public hearing or a
6 referendum more than once in any twelve-month period on petitions to
7 issue, amend, or terminate a marketing order if any of the following
8 circumstances are present:

9 (1) The petition proposes to establish a marketing order for the
10 same commodity;

11 (2) The petition proposes the same or a similar amendment to a
12 marketing order; or

13 (3) The petition proposes to terminate the same marketing order.

14 NEW SECTION. **Sec. 50.** A new section is added to chapter 15.66 RCW
15 to read as follows:

16 (1) Pursuant to RCW 42.17.31907, certain agricultural business
17 records, commodity commission records, and department of agriculture
18 records relating to commodity commissions and producers of agricultural
19 commodities are exempt from public disclosure.

20 (2) Financial and commercial information and records submitted to
21 either the department or a commodity commission for the purpose of
22 administering this act or a marketing order may be shared between the
23 department and the applicable commodity commission. They may also be
24 used, if required, in any suit or administrative hearing involving any
25 provision of this chapter or a marketing order.

26 (3) This chapter does not prohibit:

27 (a) The issuance of general statements based upon the reports of a
28 number of persons subject to any marketing order as long as the
29 statements do not identify the information furnished by any person; or

30 (b) The publication by the director or a commodity commission of
31 the name of any person violating any marketing order and a statement of
32 the manner of the violation by that person.

33 **Sec. 51.** RCW 15.66.110 and 2001 c 315 s 2 are each amended to read
34 as follows:

35 (1) Every marketing order shall establish a commodity commission
36 composed of not less than five nor more than thirteen members. In

1 addition, the director shall be an ex officio member of each commodity
2 commission unless otherwise specified in the marketing order.
3 Commission members shall be citizens and residents of this state if
4 required by the marketing order, and over the age of eighteen. Not
5 more than one commission member may be part of the same "person" as
6 defined by this chapter. The term of office of commission members
7 shall be three years with the terms rotating so that one-third of the
8 terms will commence as nearly as practicable each year. However, the
9 first commission shall be selected, one-third for a term of one year,
10 one-third for a term of two years, and one-third for a term of three
11 years, as nearly as practicable. Except as provided in subsection (2)
12 of this section, no less than two-thirds of the commission members
13 shall be elected by the affected producers and such elected members
14 shall all be affected producers. The remaining members shall be
15 appointed by the commission and shall be either affected producers,
16 others active in matters relating to the affected commodity, or persons
17 not so related.

18 (2) A marketing order may provide that a majority of the commission
19 be appointed by the director, but in any event, no less than one-third
20 of the commission members shall be elected by the affected producers.

21 (3) In the event that the marketing order provides that a majority
22 of the commission be appointed by the director, the marketing order
23 shall incorporate either the provisions of section 52 or 53 of this act
24 for member selection.

25 NEW SECTION. Sec. 52. A new section is added to chapter 15.66 RCW
26 to read as follows:

27 (1) This section or section 53 of this act applies when the
28 director appoints a majority of the positions of the commission as set
29 forth under RCW 15.66.110(3).

30 (2) Candidates for director-appointed positions on a commission
31 shall be nominated under RCW 15.66.120(1).

32 (3) Not less than sixty days nor more than seventy-five days prior
33 to the commencement of a commission member's term, the director shall
34 cause an advisory vote to be held for the director-appointed positions.
35 Advisory ballots shall be mailed to all affected producers and shall be
36 returned to the director not less than thirty days prior to the
37 commencement of the term. The advisory ballot shall be conducted in a
38 manner so that it is a secret ballot. The names of the two candidates

1 receiving the most votes in the advisory vote shall be forwarded to the
2 director for potential appointment to the commission. In the event
3 there are only two candidates nominated for a position, an advisory
4 vote may not be held and the candidates' names shall be forwarded to
5 the director for potential appointment.

6 (4) The candidates whose names are forwarded to the director for
7 potential appointment shall submit to the director a letter stating why
8 he or she wishes to be appointed to the commission. The director may
9 select either person for the position.

10 NEW SECTION. Sec. 53. A new section is added to chapter 15.66 RCW
11 to read as follows:

12 (1) This section or section 52 of this act applies when the
13 director appoints a majority of the positions on a commission as set
14 forth under RCW 15.66.110(3).

15 (2) Candidates for director-appointed positions on a commission
16 shall be nominated under RCW 15.66.120(1).

17 (3) Not less than sixty days nor more than seventy-five days prior
18 to the commencement of a commission member's term, the director shall
19 cause an advisory vote to be held for the director-appointed positions.
20 Advisory ballots shall be mailed to all affected producers and shall be
21 returned to the director not less than thirty days prior to the
22 commencement of the term. The advisory ballot shall be conducted in a
23 manner so that it is a secret ballot. The name of the candidate
24 receiving the most votes in the advisory vote shall be forwarded to the
25 director for appointment to the commission.

26 (4) The director shall appoint the candidate receiving the most
27 votes in an advisory ballot unless the candidate fails to meet the
28 qualifications of commission members under this chapter and the
29 marketing order. In the event the director rejects the candidate
30 receiving the most votes, the position is vacant and shall be filled
31 under RCW 15.66.120(8).

32 Sec. 54. RCW 15.66.120 and 1975 1st ex.s. c 7 s 9 are each amended
33 to read as follows:

34 (1) Not less than ninety days nor more than one hundred and five
35 days prior to the beginning of each term of each elected commission
36 member, ~~((the director shall give))~~ notice ~~((by mail))~~ shall be mailed
37 to all affected producers ~~((of the vacancy and))~~ with a call for

1 nominations in accordance with this section and ~~((with the))~~ provisions
2 of the marketing order ~~((and shall give))~~. The notice ~~((of))~~ shall
3 give the final date for filing nominations, which shall not be less
4 than eighty days nor more than eighty-five days before the beginning of
5 such term. ~~((Such))~~ The notice shall also advise that nominating
6 petitions shall be signed by five persons qualified to vote for such
7 candidates or, if the number of nominating signers is provided for in
8 the marketing order, ~~((such))~~ then the number ~~((as such))~~ provided in
9 the marketing order ~~((provides))~~.

10 (2) Not less than sixty days nor more than seventy-five days prior
11 to the commencement of ~~((such))~~ a commission member term, the director
12 shall ~~((submit by))~~ mail ballots to all affected producers~~((, which))~~.
13 Ballots shall be required to be returned to the director not less than
14 thirty days prior to the commencement of ~~((such))~~ the term. ~~((Such))~~
15 The mail ballot shall be conducted in a manner so that it shall be a
16 secret ballot. With respect to the first commission for a particular
17 commodity, the director may call for nominations for commission members
18 in the notice of ~~((his))~~ the director's decision following the hearing
19 and the ballot may be submitted at the time the director's proposed
20 order is submitted to the affected producers for their assent.

21 ~~((Said elected))~~ (3) Commission members may be elected or appointed
22 from various districts within the area covered by the marketing order
23 if the order so provides, with the number of members from each district
24 to be in accordance with the provisions of the marketing order.

25 (4) The members of the commission not elected by the affected
26 producers shall be elected by a majority of the commission at a meeting
27 of the commission within ninety days prior to expiration of the term
28 ~~((but to fill nonelective vacancies caused by other reasons than the~~
29 ~~expiration of a term, the new member shall be elected by the commission~~
30 ~~at its first meeting after the occurrence of the vacancy))~~, or
31 appointed by the director under this chapter and the marketing order.

32 (5) When only one nominee is nominated for any position on the
33 commission, the director shall ~~((deem that said nominee satisfies the~~
34 ~~requirements of the position and then it shall be deemed that said~~
35 ~~nominee has been duly))~~ determine whether the nominee meets the
36 qualifications of the position and, if so, the director shall declare
37 the nominee elected or appoint the nominee to the position.

38 (6) In the event of a vacancy in an elected commission member
39 position on a commodity commission, the remaining members shall select

1 a qualified person to fill the vacant position for the remainder of the
2 current term or as provided in the marketing order.

3 (7) In the event of a vacancy in an appointed member position on a
4 commodity commission, the appointment of members shall be as specified
5 in the marketing order.

6 (8) In the event of a vacancy in a director-appointed member
7 position on a commodity commission, the remaining members shall
8 recommend to the director a qualified person for appointment to the
9 vacant position. The director shall appoint the person recommended by
10 the commission unless the person fails to meet the qualifications of
11 commission members under this chapter and the marketing order.

12 NEW SECTION. Sec. 55. A new section is added to chapter 15.66 RCW
13 to read as follows:

14 (1) Upon completion of any vote, referendum, or nomination and
15 elections, the department shall tally the results of the vote and
16 provide the results to affected parties.

17 (2) If an affected party disputes the results of a vote, that
18 affected party, within sixty days from the announced results, shall
19 provide in writing a statement of why the vote is disputed and request
20 a recount.

21 (3) Once the vote is tallied and distributed, all disputes are
22 resolved, and all matters in a vote are finalized, the individual
23 ballots may be destroyed.

24 **Sec. 56.** RCW 15.66.130 and 2001 2nd sp.s. c 6 s 2 are each amended
25 to read as follows:

26 Each commodity commission shall hold such regular meetings as the
27 marketing order may prescribe or that the commission by resolution may
28 prescribe, together with such special meetings that may be called in
29 accordance with provisions of its resolutions upon reasonable notice to
30 all members thereof. A majority of the voting members shall constitute
31 a quorum for the transaction of all business of the commission. ~~((In~~
32 ~~the event of a vacancy in an elected or appointed position on the~~
33 ~~commission, the remaining elected members of the commission shall~~
34 ~~select a qualified person to fill the unexpired term.))~~

35 Each member of the commission shall be compensated in accordance
36 with RCW 43.03.230. Members and employees of the commission may be
37 reimbursed for actual travel expenses incurred in carrying out the

1 provisions of this chapter, as defined under the commodity ((board's))
2 commission's marketing order. Otherwise, if not defined or referenced
3 in the marketing order, reimbursement for travel expenses shall be in
4 accordance with RCW 43.03.050 and 43.03.060.

5 **Sec. 57.** RCW 15.66.140 and 2001 c 315 s 3 are each amended to read
6 as follows:

7 Every ((marketing)) commodity commission shall have such powers and
8 duties in accordance with provisions of this chapter as may be provided
9 in the marketing order and shall have the following powers and duties:

10 (1) To elect a ((chairman)) chair and such other officers as
11 determined advisable;

12 (2) To adopt, rescind and amend rules and regulations reasonably
13 necessary for the administration and operation of the commission and
14 the enforcement of its duties under the marketing order;

15 (3) To administer, enforce, direct and control the provisions of
16 the marketing order and of this chapter relating thereto;

17 (4) To employ and discharge at its discretion such administrators
18 and additional personnel, attorneys, advertising and research agencies
19 and other persons and firms that it may deem appropriate and pay
20 compensation to the same;

21 (5) To acquire personal property and purchase or lease office space
22 and other necessary real property and transfer and convey the same;

23 (6) To institute and maintain in its own name any and all legal
24 actions, including actions by injunction, mandatory injunction or civil
25 recovery, or proceedings before administrative tribunals or other
26 governmental authorities necessary to carry out the provisions of this
27 chapter and of the marketing order;

28 (7) To keep accurate records of all its receipts and disbursements,
29 which records shall be open to inspection and audit by the state
30 auditor or private auditor designated by the state auditor at least
31 every five years;

32 (8) Borrow money and incur indebtedness;

33 (9) Make necessary disbursements for routine operating expenses;

34 (10) To expend funds for commodity-related education, training, and
35 leadership programs as each commission deems expedient;

36 (11) To work cooperatively with other local, state, and federal
37 agencies; universities; and national organizations for the purposes
38 provided in the commission's marketing order;

1 (12) To enter into contracts or interagency agreements with any
2 private or public agency, whether federal, state, or local, to carry
3 out the purposes provided in the commission's marketing order.
4 Personal service contracts must comply with chapter 39.29 RCW;

5 (13) To accept and expend or retain any gifts, bequests,
6 contributions, or grants from private persons or private and public
7 agencies to carry out the purposes provided in the commission's
8 marketing order;

9 (14) To enter into contracts or agreements for research in the
10 production, irrigation, processing, transportation, marketing, use, or
11 distribution of an affected commodity;

12 (15) To retain in emergent situations the services of private legal
13 counsel to conduct legal actions on behalf of a commission. The
14 retention of a private attorney is subject to review by the office of
15 the attorney general;

16 (16) To engage in appropriate fund-raising activities for the
17 purpose of supporting activities of the commission authorized by the
18 marketing order;

19 (17) To participate in international, federal, state, and local
20 hearings, meetings, and other proceedings relating to the production,
21 irrigation, manufacture, regulation, transportation, distribution,
22 sale, or use of affected commodities including activities authorized
23 under RCW 42.17.190, including the reporting of those activities to the
24 public disclosure commission; ((and))

25 (18) To maintain a list of the names and addresses of affected
26 producers that may be compiled from information used to collect
27 assessments under the provisions of the marketing order and data on the
28 value of each producer's production for a minimum three-year period;

29 (19) To maintain a list of the names and addresses of persons who
30 handle the affected commodity within the affected area and data on the
31 amount and value of the commodity handled for a minimum three-year
32 period by each person; and

33 (20) Such other powers and duties that are necessary to carry out
34 the purposes of this chapter.

35 NEW SECTION. Sec. 58. A new section is added to chapter 15.66 RCW
36 to read as follows:

37 (1) Each commodity commission shall prepare a list of all affected
38 producers from any information available from the department,

1 producers, producer associations, organizations, or handlers of the
2 affected commodity. This list shall contain the names and addresses of
3 all affected persons who produce the affected commodity and the amount,
4 by unit, of the affected commodity produced during at least the past
5 three years.

6 (2) Each commodity commission shall prepare a list of all persons
7 who handle the affected commodity and the amount of the commodity
8 handled by each person during at least the past three years.

9 (3) It is the responsibility of all affected parties to ensure that
10 their correct address is filed with the commodity commission. It is
11 also the responsibility of affected parties to submit production data
12 and handling data to the commission as prescribed by the commission's
13 marketing order.

14 (4) Any qualified person may, at any time, have his or her name
15 placed upon any list for which he or she qualifies by delivering or
16 mailing the information to the commission. The lists shall be
17 corrected and brought up-to-date in accordance with evidence and
18 information provided to the commission.

19 (5) At the director's request, the commodity commission shall
20 provide the director a certified list of affected producers or affected
21 handlers from the commodity commission records. The list shall contain
22 all information required by the director to conduct a referendum or
23 commission member elections under this chapter.

24 (6) For all purposes of giving notice and holding referenda on
25 amendment or termination proposals, and for giving notice and electing
26 or selecting members of a commission, the applicable list corrected up
27 to the day preceding the date the list is certified by the commission
28 and mailed to the director is deemed to be the list of all affected
29 producers or affected handlers, as applicable, entitled to notice or to
30 vote. Inadvertent failure to notify an affected producer or handler
31 does not invalidate a proceeding conducted under this chapter.

32 NEW SECTION. **Sec. 59.** A new section is added to chapter 15.66 RCW
33 to read as follows:

34 Agricultural commodity commissions shall adopt rules governing
35 promotional hosting expenditures by commodity commission employees,
36 agents, or commission members under RCW 15.04.200.

1 NEW SECTION. **Sec. 60.** A new section is added to chapter 15.66 RCW
2 to read as follows:

3 If after complying with the procedures outlined in this chapter and
4 a referendum proposal to terminate a commodity commission is assented
5 to, the affected commodity commission shall:

6 (1) Document the details of all measures undertaken to terminate
7 the commodity commission and identify and document all closing costs;

8 (2) Contact the office of the state auditor and arrange for a final
9 audit of the commission. Payment for the audit shall be from
10 commission funds and identified in the budget for closing costs;

11 (3) Provide for the reimbursement to affected producers of moneys
12 collected by assessment. Reimbursement shall be made to those
13 considered affected producers over the previous three-year time frame
14 on a pro rata basis and at a percent commensurate with their volume of
15 production over the previous three-year period unless a different time
16 period is specified in the marketing order. If the commodity
17 commission finds that the amounts of moneys are so small as to make
18 impractical the computation and remitting of the pro rata refund, the
19 moneys shall be paid into the state treasury as unclaimed trust moneys;
20 and

21 (4) Transfer all remaining files to the department for storage and
22 archiving, as appropriate.

23 **Sec. 61.** RCW 15.66.180 and 1961 c 11 s 15.66.180 are each amended
24 to read as follows:

25 All moneys which are collected or otherwise received pursuant to
26 each marketing order created under this chapter shall be used solely by
27 and for the commodity commission concerned and shall not be used for
28 any other commission, nor the department except as otherwise provided
29 in this chapter. Such moneys shall be deposited in a separate account
30 or accounts in the name of the individual commission in any bank which
31 is a state depository. All expenses and disbursements incurred and
32 made pursuant to the provisions of any marketing order shall be paid
33 from moneys collected and received pursuant to such order without the
34 necessity of a specific legislative appropriation and all moneys
35 deposited for the account of any order shall be paid from said account
36 by check or voucher in such form and in such manner and upon the
37 signature of such person as may be prescribed by the commission. None

1 of the provisions of RCW 43.01.050 shall be applicable to any such
2 account or any moneys so received, collected or expended.

3 **Sec. 62.** RCW 15.66.185 and 1967 ex.s. c 54 s 2 are each amended to
4 read as follows:

5 Any funds of any agricultural commodity commission may be invested
6 in savings or time deposits in banks, trust companies, and mutual
7 savings banks (~~((which))~~) that are doing business in (~~((this state))~~) the
8 United States, up to the amount of insurance afforded such accounts by
9 the Federal Deposit Insurance Corporation. This section shall apply to
10 all funds which may be lawfully so invested, which in the judgment of
11 any agricultural commodity commission are not required for immediate
12 expenditure. The authority granted by this section is not exclusive
13 and shall be construed to be cumulative and in addition to other
14 authority provided by law for the investment of such funds.

15 **Sec. 63.** RCW 15.66.245 and 1988 c 54 s 2 are each amended to read
16 as follows:

17 Any marketing agreement or order may authorize the members of a
18 commodity commission, or their agents or designees, to participate in
19 federal or state hearings or other proceedings concerning regulation of
20 the manufacture, distribution, sale, or use of any pesticide as defined
21 by RCW 15.58.030(~~((+1))~~) (30) or any agricultural chemical which is of
22 use or potential use in producing the affected commodity. Any
23 marketing agreement or order may authorize the expenditure of commodity
24 commission funds for this purpose.

25 **Sec. 64.** RCW 15.66.260 and 1969 c 66 s 2 are each amended to read
26 as follows:

27 (~~((All general administrative expenses of the director in carrying~~
28 ~~out the provisions of this chapter shall be borne by the state:~~
29 ~~PROVIDED, That))~~) The department shall be reimbursed for actual costs
30 incurred in conducting nominations and elections for members of any
31 commodity (~~((board))~~) commission established under the provisions of this
32 chapter. Such reimbursement shall be made from the funds of the
33 commission for which the nominations and elections were conducted by
34 the director.

1 NEW SECTION. Sec. 65. RCW 15.66.020 (Declaration of purpose) and
2 1961 c 11 s 15.66.020 are each repealed.

3 **Sec. 66.** RCW 42.17.31907 and 2001 c 314 s 18 are each amended to
4 read as follows:

5 The following agricultural business records and commodity board and
6 commission records are exempt from the disclosure requirements of this
7 chapter:

8 (1) Production or sales records required to determine assessment
9 levels and actual assessment payments to commodity boards and
10 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
11 15.66, 15.74, 15.88, 15.100, and 16.67 RCW or required by the
12 department of agriculture (~~(under RCW 15.13.310(4) or 15.49.370(6))~~) to
13 administer these chapters or the department's programs;

14 (2) Consignment information contained on phytosanitary certificates
15 issued by the department of agriculture under chapters 15.13, 15.49,
16 and 15.17 RCW or federal phytosanitary certificates issued under 7
17 C.F.R. 353 through cooperative agreements with the animal and plant
18 health inspection service, United States department of agriculture, or
19 on applications for phytosanitary certification required by the
20 department of agriculture; and

21 (3) Financial and commercial information and records supplied by
22 persons (~~(to)~~) (a) to the department of agriculture for the purpose of
23 conducting a referendum for the potential establishment of a commodity
24 board or commission; (b) to the department of agriculture or commodity
25 boards or commissions formed under chapter(~~(s)~~) 15.24, 15.28, 15.44,
26 15.65, 15.66, 15.74, 15.88, 15.100, (~~(and)~~) or 16.67 RCW with respect
27 to domestic or export marketing activities or individual producer's
28 production information.

29 NEW SECTION. Sec. 67. A new section is added to chapter 15.26 RCW
30 to read as follows:

31 (1) Under RCW 42.17.31907, certain agricultural business records,
32 commission records, and department of agriculture records relating to
33 the commission and producers of agricultural commodities are exempt
34 from public disclosure.

35 (2) Financial and commercial information and records submitted to
36 either the department or the commission for the purpose of
37 administering this chapter may be shared between the department and the

1 commission. They may also be used, if required, in any suit or
2 administrative hearing involving any provision of this chapter or a
3 marketing order.

4 (3) This chapter does not prohibit:

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

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

11 NEW SECTION. Sec. 68. A new section is added to chapter 15.28 RCW
12 to read as follows:

13 (1) Under RCW 42.17.31907, certain agricultural business records,
14 commission records, and department of agriculture records relating to
15 the commission and producers of agricultural commodities are exempt
16 from public disclosure.

17 (2) Financial and commercial information and records submitted to
18 either the department or the commission for the purpose of
19 administering this chapter may be shared between the department and the
20 commission. They may also be used, if required, in any suit or
21 administrative hearing involving any provision of this chapter or a
22 marketing order.

23 (3) This chapter does not prohibit:

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

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

30 NEW SECTION. Sec. 69. A new section is added to chapter 15.44 RCW
31 to read as follows:

32 (1) Under RCW 42.17.31907, certain agricultural business records,
33 commission records, and department of agriculture records relating to
34 the commission and producers of agricultural commodities are exempt
35 from public disclosure.

36 (2) Financial and commercial information and records submitted to
37 either the department or the commission for the purpose of

1 administering this chapter may be shared between the department and the
2 commission. They may also be used, if required, in any suit or
3 administrative hearing involving any provision of this chapter or a
4 marketing order.

5 (3) This chapter does not prohibit:

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

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

12 NEW SECTION. Sec. 70. A new section is added to chapter 15.88 RCW
13 to read as follows:

14 (1) Under RCW 42.17.31907, certain agricultural business records,
15 commission records, and department of agriculture records relating to
16 the commission and producers of agricultural commodities are exempt
17 from public disclosure.

18 (2) Financial and commercial information and records submitted to
19 either the department or the commission for the purpose of
20 administering this chapter may be shared between the department and the
21 commission. They may also be used, if required, in any suit or
22 administrative hearing involving any provision of this chapter or a
23 marketing order.

24 (3) This chapter does not prohibit:

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

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

31 NEW SECTION. Sec. 71. A new section is added to chapter 16.67 RCW
32 to read as follows:

33 (1) Under RCW 42.17.31907, certain agricultural business records,
34 commission records, and department of agriculture records relating to
35 the commission and producers of agricultural commodities are exempt
36 from public disclosure.

1 (2) Financial and commercial information and records submitted to
2 either the department or the commission for the purpose of
3 administering this chapter may be shared between the department and the
4 commission. They may also be used, if required, in any suit or
5 administrative hearing involving any provision of this chapter or a
6 marketing order.

7 (3) This chapter does not prohibit:

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

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

14 NEW SECTION. Sec. 72. A new section is added to chapter 15.24 RCW
15 to read as follows:

16 The director may provide by rule for a method to fund staff support
17 for all commodity boards and commissions in accordance with section 78
18 of this act if a position is not directly funded by the legislature and
19 costs related to the specific activity undertaken on behalf of an
20 individual commodity board or commission. The commission shall provide
21 funds to the department according to the rules adopted by the director.

22 NEW SECTION. Sec. 73. A new section is added to chapter 15.26 RCW
23 to read as follows:

24 The director may provide by rule for a method to fund staff support
25 for all commodity boards and commissions in accordance with section 78
26 of this act if a position is not directly funded by the legislature and
27 costs related to the specific activity undertaken on behalf of an
28 individual commodity board or commission. The commission shall provide
29 funds to the department according to the rules adopted by the director.

30 NEW SECTION. Sec. 74. A new section is added to chapter 15.28 RCW
31 to read as follows:

32 The director may provide by rule for a method to fund staff support
33 for all commodity boards and commissions in accordance with section 78
34 of this act if a position is not directly funded by the legislature and
35 costs related to the specific activity undertaken on behalf of an

1 individual commodity board or commission. The commission shall provide
2 funds to the department according to the rules adopted by the director.

3 NEW SECTION. **Sec. 75.** A new section is added to chapter 15.44 RCW
4 to read as follows:

5 The director may provide by rule for a method to fund staff support
6 for all commodity boards and commissions in accordance with section 78
7 of this act if a position is not directly funded by the legislature and
8 costs related to the specific activity undertaken on behalf of an
9 individual commodity board or commission. The commission shall provide
10 funds to the department according to the rules adopted by the director.

11 NEW SECTION. **Sec. 76.** A new section is added to chapter 15.88 RCW
12 to read as follows:

13 The director may provide by rule for a method to fund staff support
14 for all commodity boards or commissions in accordance with section 78
15 of this act if a position is not directly funded by the legislature and
16 costs related to the specific activity undertaken on behalf of an
17 individual commodity board or commission. The commission shall provide
18 funds to the department according to the rules adopted by the director.

19 NEW SECTION. **Sec. 77.** A new section is added to chapter 16.67 RCW
20 to read as follows:

21 The director may provide by rule for a method to fund staff support
22 for all commodity boards or commissions in accordance with section 78
23 of this act if a position is not directly funded by the legislature and
24 costs related to the specific activity undertaken on behalf of an
25 individual commodity board or commission. The commission shall provide
26 funds to the department according to the rules adopted by the director.

27 NEW SECTION. **Sec. 78.** A new section is added to chapter 43.23 RCW
28 to read as follows:

29 (1) The director may provide by rule for a method to fund staff
30 support for all commodity boards and commissions if a position is not
31 directly funded by the legislature.

32 (2) Staff support funded under this section and sections 7(1)(c),
33 44(3), and 72 through 77 of this act shall be limited to one-half full-
34 time equivalent employee for all commodity boards and commissions.

1 NEW SECTION. **Sec. 79.** A new section is added to chapter 16.67 RCW
2 to read as follows:

3 The history, economy, culture, and the future of Washington state's
4 agriculture involves the beef industry. In order to develop and
5 promote beef and beef products as part of an existing comprehensive
6 scheme to regulate those products the legislature declares:

7 (1) That the Washington state beef commission is created;

8 (2) That it is vital to the continued economic well-being of the
9 citizens of this state and their general welfare that its beef and beef
10 products be properly promoted by (a) enabling the beef industry to help
11 themselves in establishing orderly, fair, sound, efficient, and
12 unhampered marketing, grading, and standardizing of beef and beef
13 products they produce; and (b) working to stabilize the beef industry
14 by increasing consumption of beef and beef products within the state,
15 the nation, and internationally;

16 (3) That beef producers operate within a regulatory environment
17 that imposes burdens on them for the benefit of society and the
18 citizens of the state and includes restrictions on marketing autonomy.
19 Those restrictions may impair the beef producer's ability to compete in
20 local, domestic, and foreign markets;

21 (4) That it is in the overriding public interest that support for
22 the beef industry be clearly expressed, that adequate protection be
23 given to agricultural commodities, uses, activities, and operations,
24 and that beef and beef products be promoted individually, and as part
25 of a comprehensive industry to:

26 (a) Enhance the reputation and image of Washington state's
27 agriculture industry;

28 (b) Increase the sale and use of beef products in local, domestic,
29 and foreign markets;

30 (c) Protect the public by educating the public in reference to the
31 quality, care, and methods used in the production of beef and beef
32 products, and in reference to the various cuts and grades of beef and
33 the uses to which each should be put;

34 (d) Increase the knowledge of the health-giving qualities and
35 dietetic value of beef products; and

36 (e) Support and engage in programs or activities that benefit the
37 production, handling, processing, marketing, and uses of beef and beef
38 products;

1 (5) That this chapter is enacted in the exercise of the police
2 powers of this state for the purpose of protecting the health, peace,
3 safety, and general welfare of the people of this state; and

4 (6) That the beef industry is a highly regulated industry and that
5 this chapter and the rules adopted under it are only one aspect of the
6 regulated industry. Other regulations and restraints applicable to the
7 beef industry include the:

8 (a) Beef Promotion and Research Act of 1985, U.S.C. Title 7,
9 Chapter 62;

10 (b) Beef promotion and research, 7 C.F.R., Part 1260;

11 (c) Agricultural Marketing Act, 7 U.S.C., section 1621;

12 (d) USDA meat grading, certification, and standards, 7 C.F.R., Part
13 54;

14 (e) Mandatory price reporting, 7 C.F.R., Part 57;

15 (f) Grazing permits, 43 C.F.R., Part 2920;

16 (g) Capper-Volstead Act, U.S.C. Title 7, Chapters 291 and 292;

17 (h) Livestock identification under chapter 16.57 RCW and rules;

18 (i) Organic food products act under chapter 15.86 RCW and rules;

19 (j) Intrastate commerce in food, drugs, and cosmetics act under
20 chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating
21 to the general manufacturing practices, food labeling, food standards,
22 food additives, and pesticide tolerances;

23 (k) Washington food processing act under chapter 69.07 RCW and
24 rules;

25 (l) Washington food storage warehouses act under chapter 69.10 RCW
26 and rules;

27 (m) Animal health under chapter 16.36 RCW and rules; and

28 (n) Weights and measures under chapter 19.94 RCW and rules.

29 **Sec. 80.** RCW 16.67.030 and 1999 c 291 s 30 are each amended to
30 read as follows:

31 For the purpose of this chapter:

32 (1) "Commission" means the Washington state beef commission.

33 (2) "Director" means the director of agriculture of the state of
34 Washington or (~~his duty~~) an appointed representative.

35 (3) "Ex officio members" means those advisory members of the
36 commission who do not have a vote.

37 (4) "Department" means the department of agriculture of the state
38 of Washington.

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

4 (6) "Beef producer" means any person who raises, breeds, grows, or
5 purchases cattle or calves for beef production.

6 (7) "Dairy (beef) producer" means any person who raises, breeds,
7 grows, or purchases cattle for dairy production and who is actively
8 engaged in the production of fluid milk.

9 (8) "Feeder" means any person actively engaged in the business of
10 feeding cattle and usually operating a feed lot.

11 (9) "Producer" means any person actively engaged in the cattle
12 industry including beef producers and dairy (beef) producers.

13 (10) "Washington cattle" shall mean all cattle owned or controlled
14 by affected producers and located or sold in the state of Washington.

15 (11) "Meat packer" means any person operating a slaughtering
16 establishment subject to inspection under a federal meat inspection
17 act.

18 (12) "Livestock salesyard operator" means any person licensed to
19 operate a cattle auction market or salesyard under the provisions of
20 chapter 16.65 RCW as enacted or hereafter amended.

21 (13) "Mail" or "send" for purposes of any notice relating to rule
22 making means regular mail or electronic distribution, as provided in
23 RCW 34.05.260 for rule making. "Electronic distribution" or
24 "electronically" means distribution by electronic mail or facsimile
25 mail.

26 **Sec. 81.** RCW 16.67.070 and 1991 c 9 s 4 are each amended to read
27 as follows:

28 (1) In the event a position on the commission becomes vacant due to
29 resignation, disqualification, death, or for any other reason, the
30 unexpired term of such position shall be filled by the director
31 forthwith.

32 (2) Each member of the commission shall be compensated in
33 accordance with RCW 43.03.230 (~~and~~).

34 (3) Each member or employee shall be reimbursed for actual travel
35 expenses (~~in accordance with~~) incurred in carrying out the provisions
36 of this chapter as defined by the commission in rule. Otherwise if not
37 defined in rule, reimbursement for travel expenses shall be at the
38 rates allowed by RCW 43.03.050 and 43.03.060.

1 **Sec. 82.** RCW 16.67.090 and 2000 c 146 s 2 are each amended to read
2 as follows:

3 The powers and duties of the commission shall include the
4 following:

5 (1) To administer and enforce the provisions of this chapter, and
6 do all things reasonably necessary to effectuate the purposes of this
7 chapter;

8 (2) To elect a chairman and such other officers as it deems
9 advisable;

10 (3) To employ and discharge at its discretion a manager, secretary,
11 and such other personnel, including attorneys engaged in the private
12 practice of law subject to the (~~approval and supervision~~) review of
13 the attorney general, as the commission determines are necessary and
14 proper to carry out the purposes of this chapter, and to prescribe
15 their duties and powers and fix their compensation;

16 (4) To adopt, rescind, and amend rules, regulations, and orders for
17 the exercise of its powers hereunder subject to the provisions of
18 chapter 34.05 RCW (~~Administrative Procedure Act~~ as now or hereafter
19 amended), except that rule-making proceedings conducted under this
20 chapter are exempt from compliance with RCW 34.05.310, the provisions
21 of chapter 19.85 RCW, the regulatory fairness act, and the provisions
22 of RCW 43.135.055 when adoption of the rule is determined by a
23 referendum vote of the affected parties;

24 (5) To establish by resolution, a headquarters which shall continue
25 as such unless and until so changed by the commission. All records,
26 books and minutes of the commission shall be kept at such headquarters;

27 (6) To require a bond of all commission members and employees of
28 the commission in a position of trust in the amount the commission
29 shall deem necessary. The premium for such bond or bonds shall be paid
30 by the commission from assessments collected. Such bond shall not be
31 necessary if any such commission member or employee is covered by any
32 blanket bond covering officials or employees of the state of
33 Washington;

34 (7) To establish a beef commission revolving fund, such fund to be
35 deposited in a bank or banks or financial institution or institutions,
36 approved for the deposit of state funds, in which all money received by
37 the commission, except an amount of petty cash for each day's needs not
38 to exceed one hundred dollars, shall be deposited each day or as often
39 during the day as advisable; none of the provisions of RCW 43.01.050 as

1 now or hereafter amended shall apply to money collected under this
2 chapter;

3 (8) To prepare a budget or budgets covering anticipated income and
4 expenses to be incurred in carrying out the provisions of this chapter
5 during each fiscal year;

6 (9) To incur expense and enter into contracts and to create such
7 liabilities as may be reasonable for the proper administration and
8 enforcement of this chapter;

9 (10) To borrow money, not in excess of its estimate of its revenue
10 from the current year's contributions;

11 (11) To keep or cause to be kept in accordance with accepted
12 standards of good accounting practice, accurate records of all
13 assessments, expenditures, moneys and other financial transactions made
14 and done pursuant to this chapter. Such records, books and accounts
15 shall be audited at least every five years subject to procedures and
16 methods lawfully prescribed by the state auditor. Such books and
17 accounts shall be closed as of the last day of each fiscal year. A
18 copy of such audit shall be delivered within thirty days after
19 completion thereof to the director, the state auditor and the
20 commission. On such years and in such event the state auditor is
21 unable to audit the records, books and accounts within six months
22 following the close of the audit period it shall be mandatory that the
23 commission employ a private auditor to make such audit;

24 (12) To sue and be sued as a commission, without individual
25 liability for acts of the commission within the scope of the powers
26 conferred upon it by this chapter;

27 (13) To cooperate with any other local, state, or national
28 commission, organization or agency, whether voluntary or established by
29 state or federal law, including recognized livestock groups, engaged in
30 work or activities similar to the work and activities of the commission
31 created by this chapter and make contracts and agreements with such
32 organizations or agencies for carrying on joint programs beneficial to
33 the beef industry;

34 (14) To accept grants, donations, contributions or gifts from any
35 governmental agency or private source for expenditures for any purpose
36 consistent with the provisions of this chapter; and

37 (15) To operate jointly with beef commissions or similar agencies
38 established by state laws in adjoining states.

1 **Sec. 83.** RCW 16.67.120 and 2000 c 146 s 5 are each amended to read
2 as follows:

3 (1) There is hereby levied an assessment of (~~(fifty cents)~~) one
4 dollar per head on all Washington cattle sold in this state or
5 elsewhere to be paid by the seller at the time of sale: PROVIDED, That
6 if such sale is accompanied by a brand inspection by the department
7 such assessment may be collected at the same time, place and in the
8 same manner as brand inspection fees. Such fees may be collected by
9 the livestock services division of the department and transmitted to
10 the commission: PROVIDED FURTHER, That, if such sale is made without
11 a brand inspection by the department the assessment shall be paid by
12 the seller and transmitted directly to the commission by the fifteenth
13 day of the month following the month the transaction occurred.

14 (2) The procedures for collecting all state and federal assessments
15 under this chapter shall be as required by the federal order and as
16 described by rules adopted by the commission.

17 **Sec. 84.** RCW 16.67.122 and 2000 c 146 s 6 are each amended to read
18 as follows:

19 In addition to the assessment authorized pursuant to RCW 16.67.120,
20 the commission has the authority to collect an additional assessment of
21 (~~(one dollar)~~) fifty cents per head for cattle subject to assessment by
22 federal order for the purpose of providing funds for a national beef
23 promotion and research program. The manner in which this assessment
24 will be levied and collected shall be established by rule. The
25 authority to collect this assessment shall be contingent upon the
26 implementation of federal legislation providing for a national beef
27 promotion and research program and the establishment of the assessment
28 requirement to fund its activities.

29 NEW SECTION. **Sec. 85.** A new section is added to chapter 16.67 RCW
30 to read as follows:

31 The commission has the power to subpoena witnesses and to issue
32 subpoenas for the production of any books, records, or documents of any
33 kind for the purpose of enforcing this chapter.

34 NEW SECTION. **Sec. 86.** A new section is added to chapter 16.67 RCW
35 to read as follows:

1 (1) The commission shall reimburse the director for necessary costs
2 for services conducted on behalf of the commission under this chapter.

3 (2) The commission may enter into an agreement with the director to
4 administer this chapter or chapter 34.05 RCW.

5 NEW SECTION. **Sec. 87.** A new section is added to chapter 15.44 RCW
6 to read as follows:

7 The history, economy, culture, and the future of Washington state's
8 agriculture involves the dairy industry. In order to develop and
9 promote Washington's dairy products as part of an existing
10 comprehensive scheme to regulate those products the legislature
11 declares:

12 (1) That the Washington state dairy products commission is created.
13 The commission may also take actions under the name "the dairy farmers
14 of Washington";

15 (2) That it is vital to the continued economic well-being of the
16 citizens of this state and their general welfare that its dairy
17 products be properly promoted by (a) enabling the dairy industry to
18 help themselves in establishing orderly, fair, sound, efficient, and
19 unhampered marketing, grading, and standardizing of the dairy products
20 they produce; and (b) working to stabilize the dairy industry by
21 increasing consumption of dairy products within the state, the nation,
22 and internationally;

23 (3) That dairy producers operate within a regulatory environment
24 that imposes burdens on them for the benefit of society and the
25 citizens of the state and includes restrictions on marketing autonomy.
26 Those restrictions may impair the dairy producer's ability to compete
27 in local, domestic, and foreign markets;

28 (4) That it is in the overriding public interest that support for
29 the dairy industry be clearly expressed, that adequate protection be
30 given to agricultural commodities, uses, activities, and operations,
31 and that dairy products be promoted individually, and as part of a
32 comprehensive industry to:

33 (a) Enhance the reputation and image of Washington state's
34 agriculture industry;

35 (b) Increase the sale and use of Washington state's dairy products
36 in local, domestic, and foreign markets;

1 (c) Protect the public by educating the public in reference to the
2 quality, care, and methods used in the production of Washington state's
3 dairy products;

4 (d) Increase the knowledge of the health giving qualities and
5 dietetic value of dairy products; and

6 (e) Support and engage in programs or activities that benefit the
7 production, handling, processing, marketing, and uses of dairy products
8 produced in Washington state;

9 (5) That this chapter is enacted in the exercise of the police
10 powers of this state for the purpose of protecting the health, peace,
11 safety, and general welfare of the people of this state; and

12 (6) That the dairy industry is a highly regulated industry and
13 that this chapter and the rules adopted under it are only one aspect of
14 the regulated industry. Other regulations and restraints applicable to
15 the dairy industry include the:

16 (a) Federal marketing order under 7 C.F.R., Part 1124;

17 (b) Dairy promotion program under the dairy and tobacco adjustment
18 act of 1983, Subtitle B;

19 (c) Milk and milk products act under chapter 15.36 RCW and rules,
20 including the:

21 (i) The national conference of interstate milk shippers pasteurized
22 milk ordinance;

23 (ii) The national conference of interstate milk shippers dry milk
24 ordinance;

25 (iii) Standards for the fabrication of single-service containers;

26 (iv) Procedures governing cooperative state-public health service;

27 (v) Methods of making sanitation ratings of milk supplies;

28 (vi) Evaluation and certification of milk laboratories; and

29 (vii) Interstate milk shippers;

30 (d) Milk and milk products for animal food act under chapter 15.37
31 RCW and rules;

32 (e) Organic food products act under chapter 15.86 RCW and rules;

33 (f) Intrastate commerce in food, drugs, and cosmetics act under
34 chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating
35 to the general manufacturing practices, milk processing, food labeling,
36 food standards, and food additives;

37 (g) Washington food processing act under chapter 69.07 RCW and
38 rules;

1 (h) Washington food storage warehouses act under chapter 69.10 RCW
2 and rules;
3 (i) Animal health under chapter 16.36 RCW and rules;
4 (j) Weighmasters under chapter 15.80 RCW and rules; and
5 (k) Dairy nutrient management act under chapter 90.64 RCW and
6 rules.

7 **Sec. 88.** RCW 15.44.010 and 1985 c 261 s 17 are each amended to
8 read as follows:

9 As used in this chapter:

10 "Commission" means the Washington state dairy products commission;

11 To "ship" means to deliver or consign milk or cream to a person
12 dealing in, processing, distributing, or manufacturing dairy products
13 for sale, for human consumption or industrial or medicinal uses;

14 "Handler" means one who purchases milk, cream, or skimmed milk for
15 processing, manufacturing, sale, or distribution;

16 "Dealer" means one who handles, ships, buys, and sells dairy
17 products, or who acts as sales or purchasing agent, broker, or factor
18 of dairy products;

19 "Mail" or "send" for purposes of any notice relating to rule
20 making, referenda, or elections means regular mail or electronic
21 distribution, as provided in RCW 34.05.260 for rule making.

22 "Electronic distribution" or "electronically" means distribution by
23 electronic mail or facsimile mail;

24 "Processor" means a person who uses milk or cream for canning,
25 drying, manufacturing, preparing, or packaging or for use in producing
26 or manufacturing any product therefrom;

27 "Producer" means a person who produces milk from cows and sells it
28 for human or animal food, or medicinal or industrial uses;

29 "Maximum authorized assessment rate" means the level of assessment
30 most recently approved by a referendum of producers;

31 "Current level of assessment" means the level of assessment paid by
32 the producer as set by the commission which cannot exceed the maximum
33 authorized assessment rate.

34 **Sec. 89.** RCW 15.44.020 and 1979 ex.s. c 238 s 2 are each amended
35 to read as follows:

36 ~~((There is hereby created a Washington state dairy products~~
37 ~~commission to be thus known and designated: PROVIDED, That the~~

1 ~~commission may take actions under the name, "the dairy farmers of~~
2 ~~Washington".)~~) The dairy products commission shall be composed of not
3 more than ten members. There shall be one member from each district
4 who shall be a practical producer of dairy products to be elected by
5 such producers, one member shall be a dealer, and one member shall be
6 a producer who also acts as a dealer, and such dealer and producer who
7 acts as a dealer shall be appointed by the director of agriculture, and
8 the director of agriculture shall be an ex officio member without vote.

9 **Sec. 90.** RCW 15.44.035 and 1965 ex.s. c 44 s 7 are each amended to
10 read as follows:

11 (1) The commission shall prior to each election, in sufficient time
12 to satisfy the requirements of RCW 15.44.033, furnish the director with
13 a list of all producers within the district for which the election is
14 being held. The commission shall require each dealer and shipper in
15 addition to the information required under RCW 15.44.110 to furnish the
16 commission with a list of names of producers whose milk they handle.

17 (2) Any producer may on his or her own motion file his or her name
18 with the commission for the purpose of receiving notice of election.

19 (3) It is the responsibility of each producer to ensure that his or
20 her correct address is filed with the commission.

21 (4) For all purposes of giving notice, holding referenda, and
22 electing members of the commission, the applicable list of producers
23 corrected up to the day preceding the date the list is certified and
24 mailed to the director is deemed to be the list of all producers or
25 handlers, as applicable, entitled to notice or to vote. The list shall
26 be corrected and brought up-to-date in accordance with evidence and
27 information provided to the commission.

28 NEW SECTION. **Sec. 91.** A new section is added to chapter 15.44 RCW
29 to read as follows:

30 (1) The commission shall reimburse the director for necessary costs
31 for services conducted on behalf of the commission under this chapter.

32 (2) The commission may enter into an agreement with the director to
33 administer this chapter or chapter 34.05 RCW.

34 **Sec. 92.** RCW 15.44.038 and 1984 c 287 s 15 are each amended to
35 read as follows:

1 (1) A majority of the commission members shall constitute a quorum
2 for the transaction of all business and the performance of all duties
3 of the commission.

4 (2) Each member shall be compensated in accordance with RCW
5 43.03.230 ((and)). Each member or employee shall be reimbursed for
6 actual travel expenses incurred in carrying out the provisions of this
7 chapter as defined by the commission in rule. Otherwise, if not
8 defined in rule, reimbursement for travel expenses shall be at the
9 rates allowed by RCW 43.03.050 and 43.03.060.

10 **Sec. 93.** RCW 15.44.060 and 1999 c 300 s 1 are each amended to read
11 as follows:

12 The commission shall have the power and duty to:

13 (1) Elect a chairman and such other officers as it deems advisable,
14 and adopt, rescind, and amend rules, regulations, and orders for the
15 exercise of its powers, which shall have the effect of law when not
16 inconsistent with existing laws;

17 (2) Administer and enforce the provisions of this chapter and
18 perform all acts and exercise all powers reasonably necessary to
19 effectuate the purpose hereof;

20 (3) Employ and discharge advertising counsel, advertising agents,
21 and such attorneys, agents, and employees as it deems necessary, and
22 prescribe their duties and powers and fix their compensation;

23 (4) Establish offices, incur expenses, enter into contracts, and
24 create such liabilities as are reasonable and proper for the proper
25 administration of this chapter;

26 (5) Investigate and prosecute violations of this chapter;

27 (6) Conduct scientific research designed to improve milk
28 production, quality, transportation, processing, and distribution and
29 to develop and discover uses for products of milk and its derivatives;

30 (7) Make in its name such ((advertising)) contracts and other
31 agreements as are necessary to build demand and promote the sale of
32 dairy products on either a state, national, or foreign basis;

33 (8) Keep accurate records of all its dealings, which shall be open
34 to public inspection and audit by the regular agencies of the state;

35 (9) Conduct the necessary research to develop more efficient and
36 equitable methods of marketing dairy products, and enter upon, singly
37 or in participation with others, the promotion and development of
38 state, national, or foreign markets; ((and))

1 (10) Participate in federal and state agency hearings, meetings,
2 and other proceedings relating to the regulation of the production,
3 manufacture, distribution, sale, or use of dairy products, to provide
4 educational meetings and seminars for the dairy industry on such
5 matters, and to expend commission funds for such activities;

6 (11) Retain the services of private legal counsel to conduct legal
7 actions, on behalf of the commission. The retention of a private
8 attorney is subject to the review of the office of the attorney
9 general;

10 (12) Work cooperatively with other local, state, and federal
11 agencies, universities, and national organizations for the purposes of
12 this chapter;

13 (13) Accept and expend or retain any gifts, bequests,
14 contributions, or grants from private persons or private and public
15 agencies to carry out the purposes of this chapter;

16 (14) Engage in appropriate fund-raising activities for the purpose
17 of supporting activities of the commission authorized by this chapter;

18 (15) Expend funds for commodity-related education, training, and
19 leadership programs as the commission deems appropriate; and

20 (16) Work cooperatively with nonprofit and other organizations to
21 carry out the purposes of this chapter.

22 **Sec. 94.** RCW 15.44.070 and 1975 1st ex.s. c 7 s 39 are each
23 amended to read as follows:

24 (1) Every rule(~~(, regulation,)~~) or order made by the commission
25 shall be filed with the director and published in two legal newspapers,
26 one east and one west of the Cascade mountains (~~and one west~~
27 thereof)), within ten days after it is (~~promulgated~~) adopted, and
28 (~~shall become~~) is effective (~~pursuant to the provisions of~~) as set
29 forth under RCW 34.05.380.

30 (2) Rule-making proceedings conducted under this chapter are exempt
31 from compliance with RCW 34.05.310, the provisions of chapter 19.85
32 RCW, the regulatory fairness act, and the provisions of RCW 43.135.055
33 when adoption of the rule is determined by a referendum vote of the
34 affected parties.

35 **Sec. 95.** RCW 15.44.080 and 1985 c 261 s 18 are each amended to
36 read as follows:

1 (1) There is hereby levied upon all milk produced in this state an
2 assessment of (~~0.6%~~):

3 (a) 0.75 percent of class I price for ~~3.5~~(%) percent butter fat
4 milk as established in any market area by a market order in effect in
5 that area or by the state department of agriculture in case there is no
6 market order for that area; (~~and~~) or

7 (b) While the federal dairy and tobacco adjustment act of 1983,
8 Title I, Subtitle B-dairy promotion program, is in effect:

9 (i) An assessment rate not to exceed the rate approved at the most
10 recent referendum that would achieve a ten cent per hundredweight
11 credit to local, state, or regional promotion organizations provided by
12 Title I, Subtitle B of the federal dairy and tobacco adjustment act of
13 1983; and

14 (ii) An additional assessment of 0.625 of one cent per
15 hundredweight.

16 (2) Subject to approval by a producer referendum as provided in
17 this section, the commission shall have the further power and duty to
18 increase the amount of the maximum authorized assessment rate to be
19 levied upon either milk or cream according to the necessities required
20 to effectuate the stated purpose of the commission.

21 In determining such necessities, the commission shall consider one
22 or more of the following:

23 (a) The necessities of(~~—~~):

24 (i) Developing better and more efficient methods of marketing milk
25 and related dairy products;

26 (ii) Aiding dairy producers in preventing economic waste in the
27 marketing of their commodities;

28 (iii) Developing and engaging in research for developing better and
29 more efficient production, marketing, and utilization of agricultural
30 products;

31 (iv) Establishing orderly marketing of dairy products;

32 (v) Providing for uniform grading and proper preparation of dairy
33 products for market;

34 (vi) Providing methods and means including but not limited to
35 public relations and promotion, for the maintenance of present markets,
36 for development of new or larger markets, both domestic and foreign,
37 for dairy products produced within this state, and for the prevention,
38 modification, or elimination of trade barriers which obstruct the free
39 flow of such agricultural commodities to market;

1 (vii) Restoring and maintaining adequate purchasing power for dairy
2 producers of this state; and

3 (viii) Protecting the interest of consumers by assuring a
4 sufficient pure and wholesome supply of milk and cream of good quality;

5 (b) The extent and probable cost of required research and market
6 promotion and advertising;

7 (c) The extent of public convenience, interest, and necessity; and

8 (d) The probable revenue from the assessment as a consequence of
9 its being revised.

10 (3)(a) This section shall apply where milk or cream is marketed
11 either in bulk or package. However, this section shall not apply to
12 milk or cream used upon the farm or in the household where produced.

13 (b) The increase in the maximum authorized assessment rate to be
14 charged producers on milk and cream provided for in this section shall
15 not become effective until approved by fifty-one percent of the
16 producers voting in a referendum conducted by the commission.

17 The referendum for approval of any increase in the maximum
18 authorized assessment rate provided for in this section shall be by
19 secret mail ballot furnished to all producers paying assessments to the
20 commission. The commission shall furnish ballots to producers at least
21 ten days in advance of the day it has set for concluding the referendum
22 and counting the ballots. Any interested producer may be present at
23 such time the commission counts (~~said~~) the ballots.

24 **Sec. 96.** RCW 15.44.085 and 1979 ex.s. c 238 s 5 are each amended
25 to read as follows:

26 There is hereby levied on every hundredweight of class I or class
27 II milk, as defined in RCW 15.44.087, sold by a dealer, including any
28 milk sold by a producer who acts as a dealer, an assessment of:

29 (1) Five-eighths of one cent per hundredweight. Such assessment
30 shall be in addition to the producer assessment paid by any producer
31 who also acts as a dealer.

32 (2) Any additional assessment, within the power and duty of the
33 commission to levy, such that the total assessment shall not exceed one
34 cent per hundredweight, as required to effectuate the purpose of this
35 section.

36 Such assessment may be increased by approval of dealers and
37 producers who also act as dealers, subject to the standards set forth
38 in chapter 15.44 RCW for increasing or decreasing assessments. The

1 funds derived from such assessment shall be used for educational
2 programs (~~(in institutions of learning)~~) and the sum of such funds
3 derived annually from said dealers and producers who act as dealers
4 shall be matched by assessments derived from producers for the purpose
5 of funding (~~(said)~~) the educational purposes (~~(in institutions of~~
6 ~~learning)~~) by an amount not less than the moneys collected from dealers
7 and producers who act as dealers.

8 **Sec. 97.** RCW 15.44.110 and 1961 c 11 s 15.44.110 are each amended
9 to read as follows:

10 (1) Each dealer and shipper shall at such times as by rule (~~(or~~
11 ~~regulation)~~) required(~~(7)~~) file with the commission a return under oath
12 on forms to be furnished by the commission, stating the quantity of
13 dairy products handled, processed, manufactured, delivered, and
14 shipped, and the quantity of all milk and cream delivered to or
15 purchased by such person from the various producers of dairy products
16 or their agents in the state during the period or periods prescribed by
17 the commission.

18 (2) The commission has the authority to issue subpoenas for the
19 production of books, records, documents, and other writings of any kind
20 and may issue subpoenas to witnesses to give testimony.

21 **Sec. 98.** RCW 15.44.140 and 1961 c 11 s 15.44.140 are each amended
22 to read as follows:

23 (1) The commission through its agents may inspect the premises and
24 records of any carrier, handler, dealer, manufacturer, processor, or
25 distributor of dairy products for the purpose of enforcing this
26 chapter.

27 (2) The commission has the authority to issue subpoenas for the
28 production of books, records, documents, and other writings of any kind
29 for any carrier, handler, dealer, manufacturer, processor, or
30 distributor of dairy products for the purpose of enforcing this
31 chapter.

32 NEW SECTION. **Sec. 99.** A new section is added to chapter 15.44 RCW
33 to read as follows:

34 The commission is authorized to adopt rules governing promotional
35 hosting expenditures by commission employees, agents, or board members
36 under RCW 15.04.200.

1 NEW SECTION. **Sec. 100.** A new section is added to chapter 15.44
2 RCW to read as follows:

3 The commission may establish foundations using commission funds as
4 grant money when the foundation benefits the dairy products industry.
5 Commission funds may only be used for the purposes authorized in this
6 chapter.

7 NEW SECTION. **Sec. 101.** A new section is added to chapter 15.44
8 RCW to read as follows:

9 Any board member of the commission may be a member or officer of an
10 association that has the same objectives for which the commission was
11 formed. The commission may contract with the association for services
12 necessary to carry out any purposes authorized under this chapter if an
13 appropriate written contract has been entered into.

14 **Sec. 102.** RCW 15.44.150 and 1961 c 11 s 15.44.150 are each amended
15 to read as follows:

16 (~~The state shall not be liable for the acts or on the contracts of~~
17 ~~the commission, nor shall any member or employee of the commission be~~
18 ~~liable on its contracts.)) Any action by the commission administrator,
19 member, employee, or agent thereof pertaining to the performance or
20 nonperformance or misperformance of any matters or things authorized,
21 required, or permitted by this chapter, and any other liabilities,
22 debts, or claims against the commission shall be enforced in the same
23 manner as if the commission were a corporation. Liability for the
24 debts or actions of the commission's administrator, member, employee,
25 or agent incurred in their official capacity under this chapter does
26 not exist either against the administrator, members, employees, and
27 agents in their individual capacity or the state of Washington. The
28 administrator, its members, and its agents and employees are not
29 responsible individually in any way whatsoever to any person for errors
30 in judgment, mistakes, or other acts, either of commission or omission,
31 as principal, agent, person, or employee, except for their own
32 individual acts of dishonesty or crime.~~

33 All persons employed or contracting under this chapter shall be
34 limited to, and all salaries, expenses, and liabilities incurred by the
35 commission shall be payable only from the funds collected ((hereunder))
36 under this chapter.

1 NEW SECTION. **Sec. 103.** A new section is added to chapter 15.28
2 RCW to read as follows:

3 The history, economy, culture, and the future of Washington state's
4 agriculture involves the production of soft tree fruits. In order to
5 develop and promote Washington's soft tree fruits as part of an
6 existing comprehensive regulatory scheme the legislature declares:

7 (1) That the Washington state fruit commission is created;

8 (2) That it is vital to the continued economic well-being of the
9 citizens of this state and their general welfare that its soft tree
10 fruits be properly promoted by (a) enabling the soft tree fruit
11 industry to help themselves in establishing orderly, fair, sound,
12 efficient, and unhampered cooperative marketing, grading, and
13 standardizing of soft tree fruits they produce; and (b) working to
14 stabilize the soft tree fruit industry by increasing consumption of
15 soft tree fruits within the state, the nation, and internationally;

16 (3) That producers of soft tree fruits operate within a regulatory
17 environment that imposes burdens on them for the benefit of society and
18 the citizens of the state and includes restrictions on marketing
19 autonomy. Those restrictions may impair the producers of soft tree
20 fruits in their ability to compete in local, domestic, and foreign
21 markets;

22 (4) That it is in the overriding public interest that support for
23 the soft tree fruit industry be clearly expressed, that adequate
24 protection be given to agricultural commodities, uses, activities, and
25 operations, and that soft tree fruits be promoted individually, and as
26 part of a comprehensive industry to:

27 (a) Enhance the reputation and image of Washington state's
28 agriculture industry;

29 (b) Increase the sale and use of Washington state's soft tree
30 fruits in local, domestic, and foreign markets;

31 (c) Protect the public by educating the public in reference to the
32 quality, care, and methods used in the production of Washington state's
33 soft tree fruits;

34 (d) Increase the knowledge of the health-giving qualities and
35 dietetic value of soft tree fruits;

36 (e) Support and engage in cooperative programs or activities that
37 benefit the production, handling, processing, marketing, and uses of
38 soft tree fruits produced in Washington state;

1 (5) That this chapter is enacted in the exercise of the police
2 powers of this state for the purpose of protecting the health, peace,
3 safety, and general welfare of the people of this state and to
4 stabilize and protect the soft tree fruit industry of the state; and
5 (6) That the production and marketing of soft tree fruit is a
6 highly regulated industry and that the provisions of this chapter and
7 the rules adopted under it are only one aspect of the regulated
8 industry. Other regulations and restraints applicable to the soft tree
9 fruit industry include:

10 (a) The federal marketing order under 7 C.F.R. Part 922 (apricots);
11 (b) The federal marketing order under 7 C.F.R. Part 923 (sweet
12 cherries);
13 (c) The federal marketing order under 7 C.F.R. Part 924 (prunes);
14 (d) The federal marketing order under 7 C.F.R. Part 930 (tart
15 cherries);
16 (e) The federal marketing order under 7 C.F.R. Part 931 (Bartlett
17 pears);
18 (f) Tree fruit research act under chapter 15.26 RCW;
19 (g) Controlled atmosphere storage of fruits and vegetables under
20 chapter 15.30 RCW;
21 (h) Organic food products act under chapter 15.86 RCW;
22 (i) Intrastate commerce in food, drugs, and cosmetics under chapter
23 69.04 RCW and rules;
24 (j) Washington food processing act under chapter 69.07 RCW;
25 (k) Washington food storage warehouses act under chapter 69.10 RCW;
26 (l) Weighmasters under chapter 15.80 RCW;
27 (m) Horticultural pests and diseases under chapter 15.08 RCW;
28 (n) Horticultural plants and facilities - inspection and licensing
29 under chapter 15.13 RCW;
30 (o) Planting stock under chapter 15.14 RCW;
31 (p) Standards of grades and packs under chapter 15.17 RCW;
32 (q) Washington pesticide control act under chapter 15.58 RCW;
33 (r) Farm marketing under chapter 15.64 RCW;
34 (s) Insect pests and plant diseases under chapter 17.24 RCW;
35 (t) Weights and measures under chapter 19.94 RCW;
36 (u) Agricultural products - commission merchants, dealers, brokers,
37 buyers, and agents under chapter 20.01 RCW; and
38 (v) Rules under the Washington Administrative Code, Title 16.

1 **Sec. 104.** RCW 15.28.010 and 1989 c 354 s 27 are each amended to
2 read as follows:

3 As used in this chapter:

4 (1) "Commission" means the Washington state fruit commission.

5 (2) "Shipment" or "shipped" includes loading in a conveyance to be
6 transported to market for resale, and includes delivery to a processor
7 or processing plant, but does not include movement from the orchard
8 where grown to a packing or storage plant within this state for fresh
9 shipment;

10 (3) "Handler" means any person who ships or initiates the shipping
11 operation, whether as owner, agent or otherwise;

12 (4) "Dealer" means any person who handles, ships, buys, or sells
13 soft tree fruits other than those grown by him or her, or who acts as
14 sales or purchasing agent, broker, or factor of soft tree fruits;

15 (5) "Processor" or "processing plant" includes every person or
16 plant receiving soft tree fruits for the purpose of drying,
17 dehydrating, canning, pressing, powdering, extracting, cooking, quick-
18 freezing, brining, or for use in manufacturing a product;

19 (6) "Soft tree fruits" mean Bartlett pears and all varieties of
20 cherries, apricots, prunes, plums, and peaches, which includes all
21 varieties of nectarines. "Bartlett pears" means and includes all
22 standard Bartlett pears and all varieties, strains, subvarieties, and
23 sport varieties of Bartlett pears including Red Bartlett pears, that
24 are harvested and utilized at approximately the same time and
25 approximately in the same manner.

26 (7) "Commercial fruit" or "commercial grade" means soft tree fruits
27 meeting the requirements of any established or recognized fresh fruit
28 or processing grade. Fruit bought or sold on orchard run basis and not
29 subject to cull weighback shall be deemed to be "commercial fruit."

30 (8) "Cull grade" means fruit of lower than commercial grade except
31 when such fruit included with commercial fruit does not exceed the
32 permissible tolerance permitted in a commercial grade;

33 (9) "Producer" means any person who is a grower of any soft tree
34 fruit;

35 (10) "District No. 1" or "first district" includes the counties of
36 Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane
37 and Lincoln;

38 (11) "District No. 2" or "second district" includes the counties of
39 Kittitas, Yakima, and Benton county north of the Yakima river;

1 (12) "District No. 3" or "third district" comprises all of the
2 state not included in the first and second districts;

3 (13) "Mail" or "send" for purposes of any notice relating to rule
4 making, referenda, or elections means regular mail or electronic
5 distribution, as provided in RCW 34.05.260 for rule making.
6 "Electronic distribution" or "electronically" means distribution by
7 electronic mail or facsimile mail;

8 (14) "Department" means the department of agriculture;

9 (15) "Director" means the director of agriculture.

10 **Sec. 105.** RCW 15.28.020 and 1967 c 191 s 1 are each amended to
11 read as follows:

12 (~~(A corporation to be known as the Washington state fruit~~
13 ~~commission is hereby created,)) The commission is composed of sixteen
14 voting members, (~~(to wit))~~ as follows: Ten producers, four dealers,
15 and two processors, who (~~(shall be))~~ are elected and qualified as
16 (~~(herein))~~ provided in this chapter. The director (~~(of agriculture,~~
17 ~~hereinafter referred to as the director, or his duly)), or an~~
18 authorized representative, shall be an ex officio member without a
19 vote.~~

20 A majority of the voting members (~~(shall))~~ constitute a quorum for
21 the transaction of any business.

22 **Sec. 106.** RCW 15.28.110 and 1961 c 11 s 15.28.110 are each amended
23 to read as follows:

24 The commission's duties are:

25 (1) To adopt a (~~(corporate))~~ commission seal;

26 (2) To elect a secretary-manager(~~(7))~~ and a treasurer, and fix
27 their compensation. The same person may be elected to both (~~(of said))~~
28 offices;

29 (3) To establish classifications of soft tree fruits;

30 (4) To conduct scientific research and develop the healthful,
31 therapeutic, and dietetic value of (~~(said))~~ fruits, and promote the
32 general welfare of the soft tree fruit industry of the state;

33 (5) To conduct a comprehensive advertising and educational campaign
34 to effectuate the objects of this chapter;

35 (6) To increase the production, and develop and expand the markets,
36 and improve the handling and quality of (~~(said))~~ fruits;

1 (7) To keep accurate accounts and records of all of its dealings,
2 which shall be open to inspection and audit by the state auditor;

3 (8) To investigate and prosecute violations (~~((hereof))~~) of this
4 chapter; and

5 (9) To serve as an advisory committee to the director with regard
6 to the adoption and enforcement of rules:

7 (a) Governing the grading, packing, and size and dimensions of
8 commercial containers of soft tree fruits; and

9 (b) Fixing commercial grades of soft tree fruits and the issuance
10 of certificates of inspection for those fruits.

11 **Sec. 107.** RCW 15.28.130 and 1961 c 11 s 15.28.130 are each amended
12 to read as follows:

13 Neither the state, nor any member, agent, or employee of the
14 commission, (~~((shall be))~~) is liable for the acts of the commission, or
15 upon its contracts.

16 All salaries, expenses, costs, obligations, and liabilities of the
17 commission, and claims arising from the administration of this chapter,
18 (~~((shall be))~~) are payable only from funds collected (~~((hereunder))~~)
19 this chapter.

20 In any civil or criminal action or proceeding for violation of any
21 rule of statutory or common law against monopolies or combinations in
22 restraint of trade, including any action under chapter 19.86 RCW, proof
23 that the act complained of was done in compliance with the provisions
24 of this chapter, and in furtherance of the purposes and provisions of
25 this chapter, is a complete defense to such an action or proceeding.

26 **Sec. 108.** RCW 15.28.250 and 1961 c 11 s 15.28.250 are each amended
27 to read as follows:

28 Unless the assessment has been paid by the grower and evidence
29 thereof submitted by him or her, the dealer, handler, or processor
30 (~~((shall be))~~) is responsible for the payment of all assessments
31 (~~((hereunder))~~) under this chapter on all soft tree fruits handled,
32 shipped, or processed by him or her but he or she shall charge the same
33 against the grower, who shall be primarily responsible for such
34 payment. Assessments are due upon receipt of an invoice for the
35 assessments.

36 If the assessment becomes delinquent, the department shall cease to
37 provide inspection services under chapter 15.17 RCW to the delinquent

1 party until that party pays all delinquent assessments, interest, and
2 penalties.

3 Any assessment due and payable under this section constitutes a
4 personal debt of every person so assessed or who otherwise owes the
5 same. In addition, the commission may add to such unpaid assessment or
6 sum an amount not exceeding ten percent of the same to defray the cost
7 of enforcing the collecting of the same. In the event of failure of
8 such person or persons to pay any such due and payable assessment or
9 other such sum, the commission may bring a civil action against such
10 person or persons, together with the specified ten percent thereon, and
11 such action shall be tried and judgment rendered as in any other cause
12 of action for debt due and payable.

13 NEW SECTION. Sec. 109. A new section is added to chapter 15.28
14 RCW to read as follows:

15 Rule-making proceedings conducted under this chapter are exempt
16 from compliance with RCW 34.05.310 and the provisions of chapter 19.85
17 RCW, the regulatory fairness act, when adoption of the rule is
18 determined by a referendum vote of the affected parties.

19 NEW SECTION. Sec. 110. A new section is added to chapter 15.88
20 RCW to read as follows:

21 The history, economy, culture, and future of Washington state's
22 agriculture involves the wine industry. In order to develop and
23 promote wine grapes and wine as part of an existing comprehensive
24 scheme to regulate those products the legislature declares:

25 (1) That it is vital to the continued economic well-being of the
26 citizens of this state and their general welfare that its wine grapes
27 and wine be properly promoted by (a) enabling the wine industry to help
28 themselves in establishing orderly, fair, sound, efficient, and
29 unhampered marketing of wine grapes and wines they produce; and (b)
30 working to stabilize the wine industry by increasing markets for wine
31 grapes and wine within the state, the nation, and internationally;

32 (2) That wine grape growers and wine producers operate within a
33 regulatory environment that imposes burdens on them for the benefit of
34 society and the citizens of the state and includes restrictions on
35 marketing autonomy. Those restrictions may impair the wine grape
36 growers' and wine producers' ability to compete in local, domestic, and
37 foreign markets;

1 (3) That it is in the overriding public interest that support for
2 the wine industry be clearly expressed; that adequate protection be
3 given to agricultural commodities, uses, activities, and operations;
4 and that wine grapes and wine be promoted individually, and as part of
5 a comprehensive industry to:

6 (a) Enhance the reputation and image of Washington state's
7 agriculture industry;

8 (b) Increase the sale and use of wine grapes and wine in local,
9 domestic, and foreign markets;

10 (c) Protect the public by educating the public in reference to the
11 quality, care, and methods used in the production of wine grapes and
12 wine;

13 (d) Increase the knowledge of the qualities and value of
14 Washington's wine grapes and wine; and

15 (e) Support and engage in programs or activities that benefit the
16 production, handling, processing, marketing, and uses of wine grapes
17 and wine;

18 (4) That this chapter is enacted in the exercise of the police
19 powers of this state for the purpose of protecting the health, peace,
20 safety, and general welfare of the people of this state; and

21 (5) That the production and marketing of wine grapes and wine is a
22 highly regulated industry and that the provisions of this chapter and
23 the rules adopted under it are only one aspect of the regulated
24 industry. Other regulations and restraints applicable to the wine
25 grape and wine industry include:

26 (a) Organic food products act under chapter 15.86 RCW;

27 (b) Horticultural pests and diseases under chapter 15.08 RCW;

28 (c) Horticultural plants and facilities--inspection and licensing
29 under chapter 15.13 RCW;

30 (d) Planting stock under chapter 15.14 RCW;

31 (e) Washington pesticide control act under chapter 15.58 RCW;

32 (f) Insect pests and plant diseases under chapter 17.24 RCW;

33 (g) Wholesale distributors and suppliers of wine and malt beverages
34 under chapter 19.126 RCW;

35 (h) Weights and measures under chapter 19.94 RCW;

36 (i) Title 66 RCW, alcoholic beverage control;

37 (j) Title 69 RCW, food, drugs, cosmetics, and poisons including
38 provisions of 21 C.F.R. relating to the general manufacturing

1 practices, food labeling, food standards, food additives, and pesticide
2 tolerances;

3 (k) Chapter 69.07 RCW, Washington food processing act;

4 (l) 27 U.S.C., Secs. 201 through 211, 213 through 219a, and 122A;

5 (m) 27 C.F.R., Parts 1, 6, 9, 10, 12, 16, 240, 251, 252; and

6 (n) Rules under Titles 16 and 314 WAC, and rules adopted under
7 chapter 15.88 RCW.

8 **Sec. 111.** RCW 15.88.050 and 1987 c 452 s 5 are each amended to
9 read as follows:

10 The director shall appoint the members of the commission. In
11 making such appointments of the voting members, the director shall take
12 into consideration recommendations made by the growers' association and
13 the wine institute as the persons recommended for appointment as
14 members of the commission. In appointing persons to the commission,
15 the director shall seek to ensure as nearly as possible a balanced
16 representation on the commission which would reflect the composition of
17 the growers and wine producers throughout the state as to number of
18 acres cultivated and amount of wine produced.

19 The appointment shall be carried out immediately subsequent to July
20 1, 1987, and members so appointed as set forth in this chapter shall
21 serve for the periods set forth for the original members of the
22 commission under RCW 15.88.040.

23 In the event a position on the commission becomes vacant due to
24 resignation, disqualification, death, or for any other reason, the
25 unexpired term of the position shall immediately be filled by
26 appointment by the director.

27 Each member or employee of the commission shall be reimbursed for
28 actual travel expenses ((in accordance with)) incurred in carrying out
29 the provisions of this chapter as defined by the commission in rule.
30 Otherwise if not defined in rule, reimbursement for travel expenses
31 shall be at the rates allowed by RCW 43.03.050 and 43.03.060.

32 NEW SECTION. **Sec. 112.** A new section is added to chapter 43.23
33 RCW to read as follows:

34 The director may consult with each commodity commission established
35 under state law in order to establish or maintain an integrated
36 comprehensive regulatory scheme for each commodity and the agricultural
37 industry in this state as a whole.

1 **Sec. 113.** RCW 15.76.150 and 1965 ex.s. c 32 s 2 are each amended
2 to read as follows:

3 The director shall have the authority to make allocations from the
4 state fair fund, including interest income under RCW 43.79A.040,
5 exclusively as follows: Eighty-five percent to participating
6 agricultural fairs, distributed according to the merit of such fairs
7 measured by a merit rating to be set up by the director. This merit
8 rating shall take into account such factors as area and population
9 served, open and/or youth participation, attendance, gate receipts,
10 number and type of exhibits, premiums and prizes paid, community
11 support, evidence of successful achievement of the aims and purposes of
12 the fair, extent of improvements made to grounds and facilities from
13 year to year, and overall condition and appearance of grounds and
14 facilities. The remaining fifteen percent of money in the state fair
15 fund may be used for special assistance to any participating fair or
16 fairs and for administrative expenses incurred in the administration of
17 this chapter only, including expenses incurred by the fair commission
18 as may be approved by the director: PROVIDED, That not more than five
19 percent of the state fair fund may be used for such expenses.

20 The division and payment of funds authorized in this section shall
21 occur at such times as the director may prescribe.

22 NEW SECTION. **Sec. 114.** The following acts or parts of acts are
23 each repealed:

- 24 (1) RCW 16.67.020 (Purpose of chapter) and 1969 c 133 s 19;
25 (2) RCW 15.44.037 (Reimbursement of election costs) and 1965 ex.s.
26 c 44 s 8;
27 (3) RCW 15.44.900 (Purpose of chapter) and 1961 c 11 s 15.44.900;
28 and
29 (4) RCW 15.28.900 (Preamble) and 1961 c 11 s 15.28.900.

30 **Sec. 115.** RCW 15.24.010 and 1989 c 354 s 53 are each amended to
31 read as follows:

32 As used in this chapter:

- 33 (1) "Commission" means the Washington ~~((state))~~ apple
34 ~~((advertising))~~ commission;
35 (2) "Ship" means to load apples into a conveyance for transport,
36 except apples being moved from the orchard where grown to a packing
37 house or warehouse within the immediate area of production;

1 (3) "Handler" means any person who ships or initiates a shipping
2 operation, whether for himself, herself, or for another;

3 (4) "Dealer" means any person who handles, ships, buys, or sells
4 apples, or who acts as sales or purchasing agent, broker, or factor of
5 apples;

6 (5) "Processor" and "processing plant" means every person to whom
7 and every place to which apples are delivered for drying, dehydrating,
8 canning, pressing, powdering, extracting, cooking, or for use in
9 producing a product or manufacturing a manufactured article;

10 (6) "Processing apples" means all apples delivered to a processing
11 plant for drying, dehydrating, canning, pressing, powdering,
12 extracting, cooking, or for use in producing a product or manufacturing
13 a manufactured article. However, "processing apples" does not include
14 fresh apples sliced or cut for raw consumption;

15 (7) "Fresh apples" means all apples other than processing apples;

16 (8) "Director" means the director of the department of agriculture
17 or his or her duly authorized representative;

18 (9) "Grower district No. 1" includes the counties of Chelan,
19 Okanogan, and Douglas;

20 (10) "Grower district No. 2" includes the counties of Kittitas,
21 Yakima, Benton, and Franklin;

22 (11) "Grower district No. 3" includes all counties in the state not
23 included in the first and second districts;

24 (12) "Dealer district No. 1" includes the area of the state north
25 of Interstate 90;

26 (13) "Dealer district No. 2" includes the area of the state south
27 of Interstate 90; and

28 (14) "Executive officer" includes, but is not limited to, the
29 principal management executive, sales manager, general manager, or
30 other executive employee of similar responsibility and authority.

31 **Sec. 116.** RCW 15.24.020 and 1989 c 354 s 54 are each amended to
32 read as follows:

33 There is hereby created a Washington ((state)) apple
34 ((advertising)) commission to be thus known and designated. The
35 commission shall be composed of nine practical apple producers and four
36 practical apple dealers. The director shall be an ex officio member of
37 the commission without vote.

1 The nine producer members shall be citizens and residents of this
2 state, over the age of twenty-five years, each of whom, either
3 individually or as an executive officer of a corporation, firm or
4 partnership, is and has been actually engaged in growing and producing
5 apples within the state of Washington for a period of five years,
6 currently operates a commercial producing orchard in the district
7 represented, and has during that period derived a substantial portion
8 of his or her income therefrom: PROVIDED, That he or she may own and
9 operate an apple warehouse and pack and store apples grown by others,
10 without being disqualified, so long as a substantial quantity of the
11 apples handled in such warehouse are grown by him or her; and he or she
12 may sell apples grown by himself, herself, and others so long as he or
13 she does not sell a larger quantity of apples grown by others than
14 those grown by himself or herself. The four dealer members shall be
15 persons who, either individually or as executive officers of a
16 corporation, firm, partnership, association, or cooperative
17 organization, are and have been actively engaged as dealers in apples
18 within the state of Washington for a period of five years, and are
19 citizens and residents of this state, and are engaged as apple dealers
20 in the district represented. The qualifications of members of the
21 commission as herein set forth must continue during their term of
22 office.

23 **Sec. 117.** RCW 15.24.040 and 1989 c 354 s 56 are each amended to
24 read as follows:

25 The (~~director~~) commission shall call a meeting of apple growers,
26 and meetings of apple dealers in dealer district No. 1 and dealer
27 district No. 2 for the purpose of nominating their respective members
28 of the commission, when a term is about to expire, or when a vacancy
29 exists, except as provided in RCW 15.24.050, as amended, at times and
30 places to be fixed by the commission. (~~Said~~) The meetings shall be
31 held not later than February 15th of each year and insofar as
32 practicable, the (~~said~~) meetings of the growers shall be held at the
33 same time and place as the annual meeting of the Washington state
34 horticultural association, or the annual meeting of any other producer
35 organization which represents a majority of the state's apple
36 producers, as determined by the commission, but not while the same is
37 in actual session. Public notice of such meetings shall be given by
38 the commission in such manner as it may determine: PROVIDED, That

1 nonreceipt of the notice by any interested person shall not invalidate
2 the proceedings. Any qualified person may be nominated orally for such
3 positions at the (~~said~~) respective meetings. Nominations may also be
4 made within five days after any such meeting by written petition filed
5 in the Wenatchee office of the commission, signed by not less than five
6 apple growers or dealers, as the case may be, residing within the
7 district or within the subdivision if the nomination is made from a
8 subdivision.

9 The members of the commission shall be elected by secret mail
10 ballot under the supervision of the director: PROVIDED, That in any
11 case where there is but one nomination for a position, a secret mail
12 ballot shall not be conducted or required and the director shall
13 certify the candidate to be elected. Grower members of the commission
14 shall be elected by a majority of the votes cast by the apple growers
15 in the respective districts or subdivisions thereof, as the case may
16 be, each grower who operates a commercial producing apple orchard
17 within the district or subdivision being represented, whether an
18 individual proprietor, partnership, joint venture, or corporation,
19 being entitled to one vote. As to bona fide leased or rented orchards,
20 only the lessee-operator, if otherwise qualified, shall be entitled to
21 vote. An individual commercial orchard operator, if otherwise
22 qualified, shall be entitled to vote as such, even though he or she is
23 also a member of a partnership or corporation which votes for other
24 apple acreage. Dealer members of the commission shall be elected by a
25 majority of the votes cast by the apple dealers in the respective
26 districts, each dealer being entitled to one vote. If a nominee does
27 not receive a majority of the votes on the first ballot, a run-off
28 election shall be held by mail in a similar manner between the two
29 candidates for such position receiving the largest number of votes.

30 **Sec. 118.** RCW 15.24.050 and 1984 c 287 s 12 are each amended to
31 read as follows:

32 In the event a position becomes vacant due to resignation,
33 disqualification, death, or for any other reason, such position until
34 the next annual meeting shall be filled by vote of the remaining
35 members of the commission. At such annual meeting a commissioner shall
36 be elected to fill the balance of the unexpired term.

1 A majority of the voting members shall constitute a quorum for the
2 transaction of all business and the carrying out of the duties of the
3 commission.

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

9 **Sec. 119.** RCW 15.24.070 and 1994 c 134 s 1 are each amended to
10 read as follows:

11 The Washington (~~state~~) apple (~~advertising~~) commission is hereby
12 declared and created a corporate body. The powers and duties of the
13 commission shall include the following:

14 (1) To elect a chair and such other officers as it deems advisable;
15 and to adopt, rescind, and amend rules and orders for the exercise of
16 its powers under this chapter, which shall have the force and effect of
17 the law when not inconsistent with existing laws;

18 (2) To administer and enforce the provisions of this chapter, and
19 do all things reasonably necessary to effectuate the purposes of this
20 chapter;

21 (3) To employ and at its pleasure discharge a manager, secretary,
22 agents, attorneys, and employees as it deems necessary, and to
23 prescribe their duties and powers and fix their compensation;

24 (4) To establish offices and incur expense and enter into contracts
25 and to create such liabilities as may be reasonable for the proper
26 administration and enforcement of this chapter. Expenses may include
27 reasonable, prudent use of promotional hosting to benefit the purposes
28 of this chapter;

29 (5) To investigate and prosecute violations of this chapter;

30 (6) To conduct scientific research to develop and discover the
31 health, food, therapeutic, and dietetic value of apples and apple
32 products;

33 (7) To keep accurate record of all of its dealings, which shall be
34 open to inspection and audit by the state auditor;

35 (8) To sue and be sued, adopt a corporate seal, and have all of the
36 powers of a corporation;

37 (9) To expend funds for commodity-related education, training, and
38 leadership programs as the commission deems expedient;

1 (10) To borrow money and incur indebtedness;

2 (11) To accept gifts, grants, conveyances, bequests, and devises,
3 of real or personal property, or both, in trust or otherwise, and sell,
4 lease, exchange, invest, or expend these donations or the proceeds,
5 rents, profits, and income from the donations except as limited by the
6 donor's terms. The commission shall adopt rules to govern and protect
7 the receipt and expenditure of the proceeds, rents, profits, and income
8 of all such gifts, grants, conveyances, bequests, and devises. The
9 authority to make expenditures granted by this subsection includes the
10 authority to make expenditures to provide scholarships or financial
11 assistance to persons as defined in RCW 1.16.080 or entities associated
12 with the apple industry, but is not limited to the authority to make
13 expenditures for such a purpose; ~~((and))~~

14 (12) To engage in appropriate fund-raising activities for the
15 purpose of supporting the activities of the commission authorized by
16 this chapter; and

17 (13) To retain, discharge, or contract with, at its pleasure,
18 accountants, marketing agencies, and other professional consultants as
19 necessary, under procedures for hiring, discharging, and review as
20 adopted by the commission.

21 **Sec. 120.** RCW 15.24.080 and 1961 c 11 s 15.24.080 are each amended
22 to read as follows:

23 In order to benefit the people of this state, the state's economy
24 and its general tax revenues, the commission shall provide for and
25 conduct a comprehensive and extensive research, advertising, and
26 educational campaign as continuous as the crop, sales, and market
27 conditions reasonably require. It shall investigate and ascertain the
28 needs of producers, conditions of the markets, and extent to which
29 public convenience and necessity require research and advertising to be
30 conducted.

31 **Sec. 121.** RCW 15.24.085 and 1961 c 11 s 15.24.085 are each amended
32 to read as follows:

33 The restrictive provisions of chapter 43.78 RCW shall not apply to
34 promotional printing and literature for the Washington ~~((state))~~ apple
35 ~~((advertising))~~ commission, the Washington state fruit commission, or
36 the Washington state dairy products commission.

1 **Sec. 122.** RCW 15.24.090 and 1983 c 95 s 1 are each amended to read
2 as follows:

3 If it appears from investigation by the commission that the revenue
4 from the assessment levied on fresh apples under this chapter is too
5 high or is inadequate to accomplish the purposes of this chapter, the
6 commission shall adopt a resolution setting forth the necessities of
7 the industry, the extent and probable cost of the required research,
8 market promotion, and advertising, the extent of public convenience,
9 interest, and necessity, and probable revenue from the assessment
10 levied. It shall thereupon decrease or increase the assessment to a
11 sum determined by the commission to be necessary for those purposes
12 based upon a rate per one hundred pounds of apples, gross billing
13 weight, shipped in bulk, container, or any style of package or
14 reasonable equivalent net product assessment as determined by the
15 commission. However, if a different rate is determined for any
16 specific variety or for fresh apples sliced or cut for raw consumption,
17 that different rate must be applied to that variety or those sliced or
18 cut apples. A decrease or an increase becomes effective sixty days
19 after the resolution is adopted or on any other date provided for in
20 the resolution, but shall be first referred by the commission to a
21 referendum mail ballot by the apple growers of this state conducted
22 under the supervision of the director and be approved by a majority of
23 the growers voting on it and also be approved by voting growers who
24 operate more than fifty percent of the acreage voted in the same
25 election. After the mail ballot, if favorable to the increase or
26 decrease, the commission shall nevertheless exercise its independent
27 judgment and discretion as to whether or not to approve the increase or
28 decrease.

29 **Sec. 123.** RCW 15.24.100 and 1967 c 240 s 28 are each amended to
30 read as follows:

31 There is hereby levied upon all fresh apples grown annually in this
32 state, and all apples packed as Washington apples, an assessment of
33 twelve cents on each one hundred pounds gross billing weight or
34 reasonable equivalent net product assessment measurement, as determined
35 by the commission, plus such annual decreases or increases thereof as
36 are imposed pursuant to the provisions of RCW 15.24.090. All moneys
37 collected hereunder shall be expended to effectuate the purpose and
38 objects of this chapter.

1 **Sec. 124.** RCW 15.24.110 and 1967 c 240 s 29 are each amended to
2 read as follows:

3 The assessments on fresh apples shall be paid, or provision made
4 therefor satisfactory to the commission, prior to shipment, and no
5 fresh apples shall be carried, transported, or shipped by any person or
6 by any carrier, railroad, truck, boat, or other conveyance until the
7 assessment has been paid or provision made therefor satisfactory to the
8 commission.

9 The commission shall by rule (~~or regulation~~) prescribe the method
10 of collection, and for that purpose may require stamps to be known as
11 "Washington apple (~~advertising~~) stamps" to be purchased from the
12 commission and attached to the containers, invoices, shipping
13 documents, inspection certificates, releases, or receiving receipts or
14 tickets. Rule-making procedures conducted under this section are
15 exempt from the provisions of RCW 43.135.055 when adoption of the rule
16 or rules is determined by a referendum vote of the persons taxed under
17 this chapter.

18 NEW SECTION. **Sec. 125.** A new section is added to chapter 15.24
19 RCW to read as follows:

20 Rule-making proceedings conducted under this chapter are exempt
21 from compliance with RCW 34.05.310 and the provisions of chapter 19.85
22 RCW, the regulatory fairness act, when the proposed rule is subject to
23 a referendum.

24 **Sec. 126.** RCW 15.24.160 and 1961 c 11 s 15.24.160 are each amended
25 to read as follows:

26 To maintain and complement the existing comprehensive regulatory
27 scheme, the commission may employ, designate as agent, act in concert
28 with, and enter into contracts with any person, council, or commission,
29 including but not limited to the director, state agencies such as the
30 Washington state fruit commission and its successors, statewide
31 horticultural associations, organizations or associations engaged in
32 tracking the movement and marketing of horticultural products, and
33 organizations or associations of horticultural growers, for the purpose
34 of promoting the general welfare of the apple industry and particularly
35 for the purpose of assisting in the sale and distribution of apples in
36 domestic or foreign commerce, and expend its funds or such portion
37 thereof as it may deem necessary or advisable for such purpose and for

1 the purpose of paying its proportionate share of the cost of any
2 program providing direct or indirect assistance to the sale and
3 distribution of apples in domestic or foreign commerce. For such
4 purposes it may employ and pay for legal counsel and contract and pay
5 for other professional services. Neither the state, nor any member,
6 agent, or employee of the commission, is liable for the acts of the
7 commission, or upon its contracts. In any civil or criminal action or
8 proceeding for violation of any rule of statutory or common law against
9 monopolies or combinations in restraint of trade, including any action
10 under chapter 19.86 RCW, proof that the act complained of was done in
11 compliance with the provisions of this chapter, and in furtherance of
12 the purposes and provisions of this chapter, is a complete defense to
13 such an action or proceeding.

14 **Sec. 127.** RCW 15.24.170 and 1975 1st ex.s. c 7 s 37 are each
15 amended to read as follows:

16 Rules, regulations, and orders made by the commission shall be
17 filed with the director and published in a legal newspaper in the
18 cities of Wenatchee and Yakima within five days after being made, and
19 shall become effective pursuant to the provisions of RCW ((34.05.040))
20 34.05.380.

21 **Sec. 128.** RCW 15.24.800 and 1987 c 6 s 1 are each amended to read
22 as follows:

23 The legislature hereby finds that, in order to permit the
24 Washington ((state)) apple ((advertising)) commission to accomplish
25 more efficiently its important public purposes, as enumerated in
26 chapter 15.24 RCW, it is necessary for the state to assist in financing
27 a new building for the commission, to be located on Euclid Avenue in
28 Chelan county, and housing commission offices, warehouse space, and a
29 display room. The state's assistance shall augment approximately five
30 hundred thousand dollars in commission funds which will be applied
31 directly to the payment of the costs of this project. The state's
32 assistance shall be in the amount of eight hundred thousand dollars, or
33 so much thereof as may be required, to be provided from the proceeds
34 from the sale and issuance of general obligation bonds of the state,
35 the principal of and interest on which shall be reimbursed to the state
36 treasury by the commission from revenues derived from the assessments
37 levied pursuant to chapter 15.24 RCW and other sources.

1 **Sec. 129.** RCW 15.24.802 and 1987 c 6 s 2 are each amended to read
2 as follows:

3 For the purpose of providing part of the funds necessary for the
4 Washington ((state)) apple ((advertising)) commission to undertake a
5 capital project consisting of the land acquisition for, and the design,
6 construction, furnishing, and equipping of, the building described in
7 RCW 15.24.800, and to pay the administrative costs of such project,
8 including costs of bond issuance and retirement, salaries and related
9 costs of officials and employees of the state, and other expenses
10 incidental to the administration of such project, the state finance
11 committee is authorized to issue general obligation bonds of the state
12 of Washington in the sum of eight hundred thousand dollars, or so much
13 thereof as may be required.

14 **Sec. 130.** RCW 15.24.806 and 1987 c 6 s 4 are each amended to read
15 as follows:

16 The proceeds from the sale of the bonds authorized in RCW
17 15.24.802, together with all grants, donations, transferred funds, and
18 all other moneys which the state finance committee or the Washington
19 ((state)) apple ((advertising)) commission may direct the state
20 treasurer to deposit therein, shall be deposited in the state building
21 construction account in the state treasury.

22 **Sec. 131.** RCW 15.24.808 and 1987 c 6 s 5 are each amended to read
23 as follows:

24 Subject to legislative appropriation, all proceeds from the sale of
25 the bonds authorized in RCW 15.24.802 shall be administered and
26 expended by the Washington ((state)) apple ((advertising)) commission
27 exclusively for the purposes specified in RCW 15.24.802.

28 **Sec. 132.** RCW 15.24.812 and 1987 c 6 s 7 are each amended to read
29 as follows:

30 On or before June 30 of each year, the state finance committee
31 shall certify to the Washington ((state)) apple ((advertising))
32 commission the principal and interest payments determined under RCW
33 15.24.810, exclusive of deposit interest credit, attributable to the
34 bonds issued under RCW 15.24.802. On each date on which any interest
35 or principal and interest payment is due, the commission shall cause
36 the amount certified by the state finance committee to be due on such

1 date to be paid out of the commission's general fund to the state
2 treasurer for deposit into the general fund of the state treasury.

3 **Sec. 133.** RCW 15.24.818 and 1987 c 6 s 10 are each amended to read
4 as follows:

5 The bonds authorized by RCW 15.24.802 shall be issued only after
6 the treasurer of the Washington ~~((state))~~ apple ~~((advertising))~~
7 commission has certified that the net proceeds of the bonds, together
8 with all money to be made available by the commission for the purposes
9 described in RCW 15.24.802, shall be sufficient for such purposes; and
10 also that, based upon the treasurer's estimates of future income from
11 assessments levied pursuant to chapter 15.24 RCW and other sources, an
12 adequate balance will be maintained in the commission's general fund to
13 enable the commission to meet the requirements of RCW 15.24.812 during
14 the life of the bonds to be issued.

15 **Sec. 134.** RCW 15.24.900 and 1961 c 11 s 15.24.900 are each amended
16 to read as follows:

17 (1) This chapter is passed:

18 ~~((+1))~~ (a) In the exercise of the police power of the state to
19 assure, through this chapter, and other chapters, that the apple
20 industry is highly regulated to protect the public health, to prevent
21 fraudulent practices, to promote the welfare of the state, and to
22 stabilize and protect the apple industry of the state as a vital and
23 integral part of its economy for the benefit of all its citizens;

24 ~~((+2))~~ (b) Because the apple crop grown in Washington comprises
25 one of the major agricultural crops of Washington, and that therefore
26 the business of selling and distributing such crop and the expanding
27 and protection of its market is of public interest;

28 ~~((+3))~~ (c) Because it is necessary and expedient to enhance the
29 reputation of Washington apples in domestic and foreign markets;

30 ~~((+4))~~ (d) Because it is necessary to discover the health giving
31 qualities and food and dietetic value of Washington apples, and to
32 spread that knowledge throughout the world in order to increase the
33 consumption of Washington apples;

34 ~~((+5))~~ (e) Because Washington grown apples are handicapped by high
35 freight rates in competition with eastern and foreign grown apples in
36 the markets of the world, and this disadvantage can only be overcome by
37 education and advertising;

1 (~~(6)~~) (f) Because the stabilizing and promotion of the apple
2 industry, the enlarging of its markets, and the increasing of the
3 consumption of apples are necessary to assure and increase the payment
4 of taxes to the state and its subdivisions, to alleviate unemployment
5 within the state, and increase wages for agricultural labor;

6 (~~(7)~~) (g) To disseminate information giving the public full
7 knowledge of the manner of production, the cost and expense thereof,
8 the care taken to produce and sell only apples of the finest quality,
9 the methods and care used in preparing for market, and the methods of
10 sale and distribution to increase the amount secured by the producer
11 therefor, so that they can pay higher wages and pay their taxes, and by
12 such information to reduce the cost of distribution so that the spread
13 between the cost to the consumer and the amount received by the
14 producer will be reduced to the minimum absolutely necessary; and

15 (~~(8)~~) (h) To protect the general public by educating it in
16 reference to the various varieties and grades of Washington apples, the
17 time to use and consume each variety, and the uses to which each
18 variety should be put.

19 (2) The history, economy, culture, and future of Washington state's
20 agricultural industry involves the apple industry. In order to develop
21 and promote apples and apple products as part of an existing
22 comprehensive scheme to regulate those products, the legislature
23 declares:

24 (a) That it is vital to the continued economic well-being of the
25 citizens of this state and their general welfare that its apple and
26 apple products be properly promoted by establishing orderly, fair,
27 sound, efficient, and unhampered marketing, grading, and standards of
28 and for apples and apple products; and by working to stabilize the
29 apple industry and by increasing consumption of apples and apple
30 products within the state, nation, and internationally;

31 (b) That apple producers operate within a regulatory environment
32 that imposes burdens on them for the benefit of society and the
33 citizens of the state and includes restrictions on marketing autonomy.
34 Those restrictions may impair the agricultural producer's ability to
35 compete in local, domestic, and foreign markets;

36 (c) That it is in the overriding public interest that support for
37 the apple industry be clearly expressed, that adequate protection be
38 given to agricultural commodities, uses, activities, and operations,

1 and that apples and apple products be promoted individually, as well as
2 part of a comprehensive promotion of the agricultural industry to:
3 (i) Enhance the reputation and image of Washington state's
4 agricultural industry;
5 (ii) Increase the sale and use of apples and apple products in
6 local, domestic, and foreign markets;
7 (iii) Protect the public and consumers by correcting any false or
8 misleading information and by educating the public in reference to the
9 quality, care, and methods used in the production of apples and apple
10 products, and in reference to the various sizes, grades, and varieties
11 of apples and the uses to which each should be put;
12 (iv) Increase the knowledge of the health-giving qualities and
13 dietetic value of apple products; and
14 (v) Support and engage in programs or activities that benefit the
15 production, handling, processing, marketing, and uses of apples and
16 apple products;
17 (d) That the apple industry is a highly regulated industry and that
18 this chapter and the rules adopted under it are only one aspect of the
19 regulation of the industry. Other regulations and restraints
20 applicable to the apple industry include:
21 (i) Washington agriculture general provisions, chapter 15.04 RCW;
22 (ii) Pests and diseases, chapter 15.08 RCW;
23 (iii) Standards of grades and packs, chapter 15.17 RCW;
24 (iv) Tree fruit research, chapter 15.26 RCW;
25 (v) Controlled atmosphere storage, chapter 15.30 RCW;
26 (vi) Higher education in agriculture, chapter 28.30 RCW;
27 (vii) Department of agriculture, chapter 43.23 RCW;
28 (viii) Fertilizers, minerals, and limes under chapter 15.54 RCW;
29 (ix) Organic food products act under chapter 15.86 RCW;
30 (x) Intrastate commerce in food, drugs, and cosmetics under chapter
31 69.04 RCW and rules;
32 (xi) Horticultural plants and facilities - inspection and licensing
33 under chapter 15.13 RCW;
34 (xii) Planting stock under chapter 15.14 RCW;
35 (xiii) Washington pesticide control act under chapter 15.58 RCW;
36 (xiv) Farm marketing under chapter 15.64 RCW;
37 (xv) Insect pests and plant diseases under chapter 17.24 RCW;
38 (xvi) Weights and measures under chapter 19.94 RCW;

1 (xvii) Agricultural products - commission merchants, dealers,
2 brokers, buyers, and agents under chapter 20.01 RCW; and

3 (xviii) The federal insecticide, fungicide, and rodenticide act
4 under 7 U.S.C. Sec. 136; and

5 (e) That this chapter is in the exercise of the police powers of
6 this state for the purposes of protecting the health, peace, safety,
7 and general welfare of the people of this state.

8 **Sec. 135.** RCW 15.26.130 and 1969 c 129 s 13 are each amended to
9 read as follows:

10 The Washington apple (~~(advertising)~~) commission and the Washington
11 state fruit commission shall supply the director with a list of known
12 producers subject to paying assessments to the respective commissions.
13 The director, in addition, shall at the commission's cost compile a
14 list of known tree fruit producers producing fruit not subject to
15 assessments of the Washington apple (~~(advertising)~~) commission and the
16 Washington state fruit commission but subject to assessments or
17 becoming subject to assessments under the provisions of this chapter.
18 In compiling such list the director shall publish notice to producers
19 of such tree fruit, requiring them to file with the director a report
20 giving the producer's name, mailing address and orchard location. The
21 notice shall be published once a week for four consecutive weeks in
22 weekly or daily newspapers of general circulation in the area or areas
23 where such tree fruit is produced. All producer reports shall be filed
24 with the director within twenty days from the date of last publication
25 of notice or thirty days of mailing notice to producers of such tree
26 fruit, whichever is later. The director shall for the purpose of
27 conducting any referendum affecting tree fruits subject to the
28 provisions of this chapter keep such list up to date when conducting
29 such referendum. Every person who becomes a producer after (~~(said)~~)
30 the list is compiled shall file with the director a similar report,
31 giving his or her name, mailing address and orchard location. Such
32 list shall be final and conclusive in conducting referendums and
33 failure to notify a producer shall not be cause for the invalidation of
34 any referendum.

35 **Sec. 136.** RCW 15.26.250 and 1969 c 129 s 25 are each amended to
36 read as follows:

1 The Washington apple ((~~advertising~~)) commission and Washington
2 state fruit commission in order to avoid unnecessary duplication of
3 costs and efforts in collecting assessments for tree fruits at the time
4 said commissions collect assessments due under the provisions of their
5 acts may also collect the assessment due the commission on such tree
6 fruit. Such assessments on winter pears may be collected by the
7 Washington state fruit commission or in a manner prescribed by the
8 commission. Assessments collected for the commission by the Washington
9 ((~~state~~)) apple ((~~advertising~~)) commission and the Washington state
10 fruit commission shall be forwarded to the commissions expeditiously.
11 No fee shall be charged the commission for the collection of
12 assessments because the research conducted by the commission shall be
13 of direct benefit to all commercial growers of tree fruits in the state
14 of Washington(~~(:—PROVIDED, That)~~). However, the commission shall
15 reimburse at actual cost to the department or the Washington state
16 fruit commission or apple commission any assessment collected for the
17 commission by such agencies for any tree fruit subject to the
18 provisions of this chapter, but not subject to pay assessments to the
19 Washington state fruit commission or the Washington apple
20 ((~~advertising~~)) commission.

21 NEW SECTION. **Sec. 137.** (1) The legislature finds that a
22 significant growth in the amount of production for several organically
23 grown agricultural products has occurred since the program began in the
24 mid-1980s and that this growth is continuing. The number of acres that
25 are now in transition from conventionally grown to organically grown
26 agricultural products is significant. The legislature finds that there
27 is interest by those involved in the production and marketing of
28 organic food products to examine the feasibility and preferred method
29 of forming a commission to assist in the promotion of organically grown
30 products in domestic and international markets and to conduct research
31 on improved methods of producing these products.

32 (2) The department of agriculture shall assist in the evaluation by
33 organic food producers and processors of procedures that could be used
34 to establish an organic food commission. The ability of organic food
35 producers and processors to form a commission under the existing
36 statutory authority in chapters 15.65 and 15.66 RCW as compared to
37 using the procedures proposed in Senate Bill No. 6246 from the 2002
38 legislative session shall be evaluated.

1 (3) The department of agriculture shall assist in the collection of
2 information on, and provide a forum to review current programs
3 administered by, commodity commissions that provide benefits to organic
4 food producers and to examine and compile the distinct needs of the
5 organic food industry.

6 (4) The department of agriculture, within the limits of its
7 currently available funds and after consultation with the organic food
8 industry and existing commodity commissions, shall provide
9 recommendations to the legislature by December 15, 2002, regarding
10 legislation for the establishment of an organic food commission, and a
11 method to fairly and equitably provide funding of commission programs.

12 (5) This section expires April 15, 2003.

13 NEW SECTION. **Sec. 138.** A new section is added to chapter 15.65
14 RCW to read as follows:

15 In order to ensure a viable and stable hop industry within the
16 state of Washington and to further the policies set forth in RCW
17 15.65.040(2) (d) and (f), the legislature specifically recognizes that
18 the hop commodity board has the power to enter into contracts, at its
19 discretion, with individual producers of hops to set aside or remove
20 from production existing planted hop acreage until such time as the
21 need to contract with individual producers of hops is eliminated based
22 on the adoption of a federal marketing order. This section does not
23 limit the director's duty under RCW 15.65.600.

24 NEW SECTION. **Sec. 139.** This act takes effect July 1, 2002, except
25 for sections 1, 15, 17, 29, 30, 39, 45, 57, 58, 137, and 138 of this
26 act which are necessary for the immediate preservation of the public
27 peace, health, or safety, or support of the state government and its
28 existing public institutions, and take effect immediately."

29 **ESHB 2688** - S COMM AMD
30 By Committee on Agriculture & International Trade

31 ADOPTED 03/06/02

32 On page 1, line 1 of the title, after "commissions;" strike the
33 remainder of the title and insert "amending RCW 15.65.020, 15.65.040,
34 15.65.050, 15.65.060, 15.65.070, 15.65.090, 15.65.120, 15.65.170,
35 15.65.180, 15.65.200, 15.65.220, 15.65.230, 15.65.235, 15.65.240,

1 15.65.250, 15.65.260, 15.65.270, 15.65.280, 15.65.375, 15.65.380,
2 15.65.430, 15.65.450, 15.65.570, 15.66.010, 15.66.030, 15.66.050,
3 15.66.060, 15.66.070, 15.66.090, 15.66.110, 15.66.120, 15.66.130,
4 15.66.140, 15.66.180, 15.66.185, 15.66.245, 15.66.260, 42.17.31907,
5 16.67.030, 16.67.070, 16.67.090, 16.67.120, 16.67.122, 15.44.010,
6 15.44.020, 15.44.035, 15.44.038, 15.44.060, 15.44.070, 15.44.080,
7 15.44.085, 15.44.110, 15.44.140, 15.44.150, 15.28.010, 15.28.020,
8 15.28.110, 15.28.130, 15.28.250, 15.88.050, 15.76.150, 15.24.010,
9 15.24.020, 15.24.040, 15.24.050, 15.24.070, 15.24.080, 15.24.085,
10 15.24.090, 15.24.100, 15.24.110, 15.24.160, 15.24.170, 15.24.800,
11 15.24.802, 15.24.806, 15.24.808, 15.24.812, 15.24.818, 15.24.900,
12 15.26.130, and 15.26.250; adding new sections to chapter 15.65 RCW;
13 adding new sections to chapter 15.66 RCW; adding new sections to
14 chapter 15.26 RCW; adding new sections to chapter 15.28 RCW; adding new
15 sections to chapter 15.44 RCW; adding new sections to chapter 15.88
16 RCW; adding new sections to chapter 16.67 RCW; adding new sections to
17 chapter 15.24 RCW; adding new sections to chapter 43.23 RCW; adding a
18 new section to chapter 15.88 RCW; creating a new section; repealing RCW
19 15.65.030, 15.65.080, 15.65.460, 15.65.405, 15.66.020, 16.67.020,
20 15.44.037, 15.44.900, and 15.28.900; prescribing penalties; providing
21 an effective date; providing an expiration date; and declaring an
22 emergency."

--- END ---