

SENATE BILL REPORT

SHB 1608

As Reported By Senate Committee On:
Agriculture & Rural Economic Development, March 31, 2005

Title: An act relating to the potato commission.

Brief Description: Creating the potato commission.

Sponsors: House Committee on Economic Development, Agriculture & Trade (originally sponsored by Representatives Grant, Holmquist, Linville, Buri, Wallace, Newhouse, Hinkle, Walsh, Quall, Kenney, Armstrong, Clements, Kristiansen, P. Sullivan, Blake, Haler, Kessler, Morrell, Chase, Skinner, McDermott and Santos).

Brief History: Passed House: 3/08/05, 95-2.

Committee Activity: Agriculture & Rural Economic Development: 3/31/05 [DPA].

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended.

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

Staff: Bob Lee (786-7404)

Background: Historically, commodity commissions and marketing orders have been a means to finance programs that were desired by the majority of growers of the particular agricultural commodity. Some commissions perform primarily marketing programs, some perform a combination of marketing and research programs, while other commissions perform only research programs.

Currently, 24 commodity commissions are formed under Washington State law. Of these, six are formed under their own individual chapter. The remaining eighteen are formed under either the 1955 or the 1961 commodity commission enabling act. The Washington Potato Commission was formed in 1956 under the 1955 enabling act, and operates pursuant to chapter 16.516 WAC.

In recent years, there have been court challenges across the nation that have objected to the use of mandatory assessments for advertising and market promotion programs alleging these programs infringe upon the constitutionally protected right to free speech. Some decisions have disallowed the use of grower assessments for advertising and market promotion programs while other courts have upheld such use based upon specific rationale and criteria. Decisions by various courts have not left consistent and clear guidance, as to the structure that commissions engaged in advertising and marketing programs must have, to safely avoid the constitutional violation.

In recent years, the various state commodity commission laws have been changed to adapt to court rulings. Specifically in relation to commissions formed under chapter 15.66 RCW, modifications in 2002 and 2003 to the 1955 enabling act relate to three areas:

- 1) oversight by the Department of Agriculture (Department) of the message regarding a commodity commission's advertising and marketing promotion program;
- 2) review and approval by the Department of commodity commission budgets including marketing plans and research programs. The costs incurred by the Department are reimbursed by the commission; and
- 3) the process of selecting board members was modified so that the direct election by growers was transformed into an advisory vote whereby the two persons receiving the most votes would be forwarded to the Director for potential appointment. Elections were administered by the Department with the costs being reimbursed by the affected commission.

Commodity commissions are in various stages of updating their administrative rules to comply with the 2002 and 2003 changes in law described above. As an alternative, the Washington Potato Commission is proposing to modify their activities by deleting authority to engage in any advertising and market promotion program in a separate but parallel chapter of law and thereby retain the direct control that it had previously over the conduct of its remaining activities.

Summary of Amended Bill: The Washington Potato Commission previously formed under one of the state's commodity commission statutes is transferred to this new chapter of law. Excluded in the new chapter are the authorities to engage in a marketing and advertising program.

The assets and personnel from the prior Washington Potato Commission are transferred to the commission formed under this statute. Existing contracts and obligations of the prior commission remain in full force and must be preformed by the commission created under this act. Existing rules and pending business of the existing Washington Potato Commission must continue to be acted upon by the Washington Potato Commission formed under this act.

The existing board members continue to serve but nomination and election of new board members will be in accordance with the new chapter. The process whereby growers directly nominate and elect commission board members is re-established. Election processes including nomination and election of board members, elections to modify assessment, and elections regarding continuation or termination of the commission are conducted by the Department of Agriculture.

Amended Bill Compared to Original Bill: Elections of board members and elections held on referendum affecting the Potato Commission are to be conducted by the Department of Agriculture rather than by the Potato Commission. Potatoes that are certified as organically grown are exempt from assessment under this chapter if a separate commodity commission is formed to specifically include organically grown potatoes. The effective date of this legislation is delayed until July 1, 2006 as compared to July 1, 2005 as provided in the version passed by the House.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes, the prior Washington Potato Commission created under rule is terminated and replaced by the Washington Potato Commission created under this chapter.

Effective Date: The bill takes effect on July 1, 2006.

Testimony For: The deletion of authority for the potato commission to engage in an advertising and market promotion program removes the largest area that has been subject to legal challenge in litigation that is occurring in various jurisdictions across the nation. The commission wants to have the authority to engage in an advertising and marketing promotion program deleted from its statute to reduce the risk of potential legal challenge. There are no known cases that have ruled against some of the ancillary activities that are contained in this legislation over which the department is concerned. The growers who pay the assessments want to retain control of the commission and want to determine how their funds are spent.

Testimony Against: The U.S. Supreme Court has heard arguments on the beef check-off case. That decision is expected this summer and could affect what activities performed by commodity commissions are considered as protected free-speech. The legislation should be deferred until the ruling is issued so that it can be altered to reflect this federal court decision. Other commodity commissions are in the process of adjusting their marketing orders to comply with the legislative requirements enacted in 2003. There are numerous technical issues in the bill that should be corrected prior to enactment. There is concern that several activities authorized in the legislation could arguably be outside of the various court rulings.

Who Testified: PRO: Jim Jesernig, Washington Potato and Onion Commission.

CON: Valoria Loveland and Mary Beth Lang, Department of Agriculture.