

SENATE BILL REPORT

ESHB 2688

As Reported By Senate Committee On:
Agriculture & International Trade, February 27, 2002

Title: An act relating to regulating commodity boards and commissions.

Brief Description: Regulating commodity boards and commissions.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representative Linville; by request of Department of Agriculture).

Brief History:

Committee Activity: Agriculture & International Trade: 2/27/02 [DPA].

SENATE COMMITTEE ON AGRICULTURE & INTERNATIONAL TRADE

Majority Report: Do pass as amended.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Sheahan, Snyder, Spanel and Swecker.

Staff: Bob Lee (786-7404)

Background: There are 24 commodity commissions in Washington State that are formed under state law. Six operate under their own separate statutory authority, and 18 are established pursuant to two different state enabling statutes. These two enabling statutes were enacted in 1955 and in 1961. There has been an ongoing effort to update and harmonize these various statutes.

Generally, commodity commissions are formed to address specific needs of a particular commodity group. The statutes provide for the allowable scope of activities that can be conducted by the commission and generally include commodity marketing programs and production research programs. The method of formation, appointment of the board of directors, and procedures for levying an assessment are provided in the statutes. Commissions receive the bulk of their funding from assessments on their respective commodities.

In recent years, there have been court rulings affecting similar kinds of generic advertising programs in other regions of the country. Due to these rulings, there is concern about the adequacy of some commodity commission statutes to withstand legal challenges.

Summary of Amended Bill: Several different chapters of law that create or enable the creation of commodity commissions are modified.

A new purpose statement is created for commodity commissions and includes the list of state and federal laws that provide for comprehensive regulation. Alternative means is provided

for the Director of Agriculture to appoint directors to the boards of various commissions and that process includes an advisory vote by the commodity producer.

Clarification is provided on the establishment of lists of affected producers who may vote in elections. The process for terminating a commission is provided and generally requires a referendum of affected producers. Timelines are provided for challenging the results of an election and for the retention of ballots.

Referendums are not required to be held more than once within a 12-month period on the same matter. A marketing order may be suspended for up to one year upon the request of a commission.

Rulemaking is conducted in accordance with the Administrative Procedure Act. Commissions may increase fees in excess of the fiscal growth factor without legislative approval if the increase is subject to a referendum by the affected parties.

In addition to existing authorities of some commissions is the authority to address transportation and irrigation related issues. The use of commission funds for promotional hosting is authorized.

Agricultural business records provided to the department for purposes of conducting elections are to remain confidential.

Assessments by the Beef Commission remain \$1 per head if the federal beef promotion program is eliminated. Several commissions have the option to adopt by rule reimbursement for actual travel expenses. Otherwise, reimbursement for travel expenses is at rates set of state agencies.

The Department of Agriculture may recover costs incurred when issuing, amending and terminating marketing orders for specific commissions. Authority is provided for commissions to contribute funding of one-half full time equivalent to provide staff support by the department to commodity commissions.

Changes are included to the Wine Commission statute that indicate the structure of regulation of the wine industry and how the Wine Commission fits with that structure.

For the Apple Commission, employees may be reimbursed for actual travel expenses for in-state travel, as well as out-of-state travel, without adopting a rule. The name of the Washington State Apple Advertising Commission is changed to the Washington Apple Commission. Fresh sliced or cut apples for raw consumption are excluded from the definition of processing apples. Commission funds for reasonable, prudent use of promotional hosting is authorized.

Changes are included to the Apple Commission statute that indicate the structure of regulation of the apple industry and how the Apple Commission fits with that structure. The commission may enter into contracts with the Washington State Fruit Commission, statewide horticultural associations, and organizations engaged in tracking the movement and marketing of horticultural products.

The state and commission members are not liable for acts of the Apple Commission or its contracts. In any civil or criminal action or for violation of statutory of common law against monopolies or combinations in restraint of trade, including actions under the Consumer Protection Act, compliance with the provisions of this chapter is a complete defense to such action or proceeding.

Amended Bill Compared to Substitute Bill: The striking amendment provides for an immediate effective date for specifically selected sections. The Department of Agriculture is to assist in a study on formation of an organic food commission and to report back prior to next legislative session. The Hop Commission is authorized to enter into contracts with existing hop producers to set-aside or remove from production existing hop acreage until a federal marketing order is adopted.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2002.

Testimony For: The Apple Commission has been conducting a program to strengthen markets for conventionally grown and organically grown apples. Due to consolidation of large retail buyers, the apple industry needs a loud voice to effectively market its product. The legislation protects commissions from legal attacks by demonstrating an overall regulatory scheme and how a commodity commission fits in that scheme.

Testimony Against: None.

Testified: PRO: Jim Koempel, WA State Growers Clearinghouse President; Allen Robison, WA State Growers Clearinghouse; Jerry Van Winkle, WA State Growers Clearinghouse; Larry Olsen, WA Apple Commission.