

SENATE BILL REPORT

ESB 6126

As Passed Senate, February 10, 2004

Title: An act relating to the Washington apple commission.

Brief Description: Promoting Washington-grown apples.

Sponsors: Senators Swecker, Rasmussen, Berkey, Mulliken, Winsley and McAuliffe; by request of Department of Agriculture.

Brief History:

Committee Activity: Agriculture: 1/20/04, 1/22/04 [DP].

Passed Senate: 2/10/04, 48-1.

SENATE COMMITTEE ON AGRICULTURE

Majority Report: Do pass.

Signed by Senators Swecker, Chair; Brandland, Vice Chair; Rasmussen and Sheahan.

Staff: Bob Lee (786-7404)

Background: Agricultural commodity commissions created under state law collect mandatory fees to carry out programs for the benefit of the specific group who pay the assessments. Commodity commissions formed under state law generally perform activities that include conducting research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of that commodity, and providing for the advertising and sales promotion of that commodity.

Similar entities have also been created under federal law which provide similar programs relating to specific agricultural commodities on a national level. In recent years, there have been a number of legal challenges on the use of mandatory assessments to provide an advertising and sales promotion program for the commodity. The issue is whether the mandatory assessment to fund an advertising and sales promotion program violates the free speech provisions of the U.S. Constitution. In essence, the issue is whether some members of the industry are being compelled to pay for a message with which some do not agree. The decisions by the federal courts have not been entirely consistent leading to uncertainty until a more definitive ruling by the U.S. Supreme Court is issued.

Advertising and sales promotion were major components of the programs administered by the Washington Apple Commission. Recently, the Federal District Court for Eastern Washington ruled that the Washington Apple Commission assessments were unconstitutional. Rather than appeal the decision, a settlement agreement was reached which includes proposing legislation to restructure the commission and reduce the assessment on apples. The assessment rate prior to the court case was 54.3 cents per hundred pounds of apples.

Summary of Bill: The Legislature declares that the Washington Apple Commission, with oversight by the director of the Washington State Department of Agriculture (WSDA), is to speak on behalf of Washington State government with regard to apples and apple-related issues.

The director's representative is changed from a nonvoting to a voting member on the Washington Apple Commission. This increases the number of voting members on the board to 14 members, of which nine represent growers and four represent dealers.

The existing members of the commission continue to serve until their terms expire. In making appointments of new grower representatives on the commission, the number appointed from each district must be based on the relative number of acres in each of the three districts. The number of grower members must be adjusted each ten-year period based on the change in the relative number of acres in each district.

The process for determining the grower and dealer members is modified from direct election by producers and dealers, to a process that provides for an advisory vote by producers and dealers to determine the top two names to be submitted to the WSDA director for appointment. The director may appoint one of the two names submitted, or may reject both and ask for additional names.

The commission must develop and submit to the WSDA director for approval any plans, programs, and projects funded by the commission. The director must review the commission's programs to ensure that they properly benefit the people of the state of Washington and its economy and properly speak the message of the state.

The Washington Apple Commission is declared and created an agency of the Washington State government. In addition to the existing powers that include research, advertising and education, the commission may: maintain and license the use of intellectual property; administer federal market access programs; with oversight by the director, speak on behalf of the state government on a nonexclusive basis with regard to apples and apple-related issues; fund, conduct or participate in scientific research relating to apples including pests, pesticides, food safety, irrigation, transportation, and environmental stewardship; provide services relating to production, promotion sale and distribution of Washington apples on a fee-for-service basis; and gather, maintain, and distribute data relating to production, processing, shipment, and sales of apples.

The assessment rate is established at 8.75 cents per hundred pounds of apples. If the assessment is too high or is inadequate, the commission shall adopt a resolution setting forth the needs of the industry. With the oversight of the director, the rate of assessment may be increased but it requires at least two-thirds approval of producers voting and acreage voting to approve an assessment increase. To decrease an assessment, a majority of the producers voting and a majority of the acreage voted is required.

If at least 8 percent of the apple producers sign a petition to reduce the assessment on apples to zero, a referendum vote is to be held by the department. The assessment on apples is reduced to zero if a simple majority of those apple producers that vote are in favor of the reduction. In that event, the commission must immediately commence to wind down its operations and the assessment is discontinued six months from the date of the referendum.

The liability of the state for the acts of the commission, or upon its contracts, is limited solely to the assets of the commission.

Commissions are entitled to the defenses, indemnifications, limitations of liability and other protections provided under Chapter 4.92 RCW relating to actions and claims against the state.

The bill contains a severability clause so that if any portion of the act is found to be invalid, the remainder shall be retained.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The restructuring of the Washington Apple Commission was developed in conjunction with the Department of Agriculture and the State Attorney General's Office. It is also in response to the settlement agreement. Extensive consultations occurred within the apple industry and a very good percentage of the industry is on board. Giving greater oversight to the director was not particularly liked by many in the industry but it was the best that could be developed to fit under the government speech category. The Apple Commission activities have included the promotion of organically produced apples and have overcome attempts of foreign countries that would have prevented organically produced apples into some countries in the European Union.

The downturn of the apple economy of central Washington affected the building construction. Any work to aid in building strong markets will also assist in providing off-farm jobs. The purpose of the program is to help put a face on the agricultural industry.

Testimony Against: The bill is supported but there is desire for a periodic review by some in the industry on whether the commission should be continued or discontinued.

Testified: PRO: Dave Carlson, Grant Daniel, Richard Thomason, Washington Apple Commission; Dannie McQueen, Dept. of Agriculture; Dave Ducharme, Yakima Valley Growers-Shippers Assn.; Ed Triezenberg, Carpenters Union.