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**SUBSTITUTE HOUSE BILL 1608**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** 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)

READ FIRST TIME 03/01/05.

1 AN ACT Relating to the potato commission; amending RCW 15.66.270;  
2 adding a new chapter to Title 15 RCW; creating new sections; providing  
3 an effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The production of potatoes within this  
6 state is in the public interest. It is vital to the continued economic  
7 well-being of the citizens of this state and their general welfare that  
8 its potato industry be encouraged by enabling producers of potatoes to  
9 help themselves in establishing orderly, fair, sound, efficient, and  
10 unhampered marketing, trade, grading, and standardization of the  
11 potatoes they produce.

12 (2) It is in the public interest that support for the potato  
13 industry be clearly expressed, that adequate protection be given to the  
14 industry, and that the industry's collective activities and operations  
15 include:

16 (a) Enhancing the reputation and image of Washington state's  
17 potatoes and potato producers;

18 (b) Working to eliminate or limit impediments affecting the sale

1 and use of Washington state's potatoes in local, domestic, and foreign  
2 markets;

3 (c) Protecting the public by educating the public in reference to  
4 the quality, care, and methods used in the production of Washington  
5 state's potatoes;

6 (d) Increasing the public knowledge of nutritional value, health-  
7 giving qualities, and dietetic value of Washington state's potatoes and  
8 products; and

9 (e) Supporting and engaging in programs or activities that benefit  
10 the planting, production, harvesting, handling, processing,  
11 transportation, trade, and use of potatoes produced in Washington  
12 state.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Affected area" or "area of production" are synonymous and mean  
16 the state of Washington.

17 (2) "Affected handler" means any handler of potatoes who is subject  
18 to this chapter.

19 (3) "Affected producer" means any producer who is subject to this  
20 chapter.

21 (4) "Assessment" means the monetary amount established in this  
22 chapter that is to be paid by each affected producer to the commission  
23 in accordance with the schedule established in this chapter.

24 (5) "Commercial quantities" means and includes five hundredweight  
25 or more.

26 (6) "Commission" means the potato commission established in this  
27 chapter.

28 (7) "District" means the geographical divisions of the area of  
29 potato production established under this chapter.

30 (8) "Fiscal year" means the twelve-month period beginning July 1st  
31 of any year.

32 (9) "Handler" means any person who acts, either as principal,  
33 agent, or otherwise, in the processing, packing, shipping, selling, or  
34 distributing of potatoes that are not produced by the handler.  
35 "Handler" does not include a common carrier used to transport an  
36 agricultural commodity. "To handle" means to act as a handler.

1 (10) "Hosting" includes providing meals, refreshments, lodging,  
2 transportation, gifts of nominal value, reasonable and customary  
3 entertainment, and normal incidental expenses at meetings or  
4 gatherings.

5 (11) "Hundredweight" or "affected unit" are synonymous and mean  
6 each one hundred pound unit or any combination of packages making a one  
7 hundred pound unit of potatoes.

8 (12) "Mail" or "send," for purposes of any notice relating to rule  
9 making, referenda, or elections, means regular mail or electronic  
10 distribution, as provided in RCW 34.05.260 for rule making. For the  
11 purposes of this definition, "electronic distribution" or  
12 "electronically" means distribution by electronic mail or facsimile  
13 mail.

14 (13) "Potatoes" means and includes all kinds and varieties of Irish  
15 potatoes grown in the state of Washington and marketed, sold, or  
16 intended for use for human consumption.

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

21 (15) "Producer" means any person who is engaged in the production  
22 for market of potatoes in commercial quantities and who has a  
23 proprietary interest in the potatoes grown in the state of Washington.  
24 For purposes of this chapter, "producer" includes a landowner,  
25 landlord, tenant, or other person who participates in the growing or  
26 producing of potatoes. "To produce" means to act as a producer.

27 (16) "Referendum" means a vote by the affected parties or affected  
28 producers that is conducted by secret ballot.

29 (17) "Sale" means a transaction wherein the property in or to  
30 potatoes is transferred from the producer to a purchaser for  
31 consideration. "Sale" includes an agreement to acquire such property  
32 for a consideration.

33 (18) "Trade relations hosting" means the hosting of individuals and  
34 groups of individuals at meetings, meals, and gatherings for the  
35 purpose of cultivating trade relations for Washington state potatoes  
36 and potato products.

37 (19) "Unfair trade practice" means any practice that is unlawful or  
38 prohibited under the laws of the state of Washington including but not

1 limited to Titles 15, 16, and 69 RCW and chapters 9.16, 19.77, 19.80,  
2 19.84, and 19.83 RCW, or any practice, whether concerning interstate or  
3 intrastate commerce that is unlawful under the federal trade commission  
4 act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or  
5 the violation of or failure accurately to label as to grades and  
6 standards in accordance with any lawfully established grades or  
7 standards or labels.

8 (20) "Vacancy" means that a commission member leaves or is removed  
9 from a position on the commission before the end of a term, or a  
10 nomination process for the beginning of a term concludes with no  
11 candidates for a position.

12 NEW SECTION. **Sec. 3.** (1) The potato commission is hereby  
13 established to administer this chapter. Commission members must be  
14 citizens and residents of Washington and at least eighteen years of  
15 age. The commission shall be composed of fifteen members, nine of whom  
16 shall be producers elected from districts as provided in subsections  
17 (2) and (3) of this section, five who are appointed by the elected  
18 producer members as provided in subsection (4) of this section, and one  
19 member appointed by the director from the department to represent the  
20 director as a voting member.

21 (2) For the purpose of nomination and selection of producer members  
22 of the commission, the affected area of the state of Washington shall  
23 be divided into three representative districts as provided in this  
24 subsection.

25 (a) District 1 is the counties of Douglas, Chelan, Okanogan, Grant,  
26 Adams, Lincoln, Ferry, Stevens, Pend Oreille, Spokane, and Whitman.

27 (b) District 2 is the counties of Kittitas, Yakima, Klickitat,  
28 Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

29 (c) District 3 is the counties of Skagit, Whatcom, and all other  
30 counties not named in (a) or (b) of this subsection.

31 (3) Producer members shall be elected from the districts as  
32 follows:

33 (a) Positions 1, 2, 3, and 4 shall be elected from district 1;

34 (b) Positions 5, 6, 7, and 8 shall be elected from district 2; and

35 (c) Position 9 shall be elected from district 3.

36 (4)(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the

1 elected producers as provided in subsections (1) and (5)(b) of this  
2 section.

3 (b) Position 15 shall be appointed by the director as provided in  
4 subsection (1) of this section.

5 (5)(a) Producer members of the commission shall be producers of  
6 potatoes in the district in and for which they are nominated and  
7 elected. The producer members shall be and have been actively engaged  
8 in producing the potatoes in this state for a period of at least three  
9 years, and shall derive a substantial proportion of their incomes from  
10 the sale of potatoes. A producer member of a commission must have paid  
11 an assessment on potatoes adopted by the commission or its predecessor  
12 commission in each of the preceding three calendar years. The  
13 qualifications of producer members of the commission must continue  
14 during their term of office.

15 (b) Members appointed to positions 10, 11, 12, 13, and 14 by the  
16 elected producers shall be either Washington potato producers,  
17 handlers, or others active in matters directly relating to Washington  
18 state potatoes and have a demonstrated record of service in the potato  
19 industry in Washington state. The appointed members of the commission  
20 shall be elected by a majority of the elected commissioners.

21 (6) The term of office of the commission members is three years  
22 from the date of their election or appointment and until their  
23 successors are elected and qualified.

24 (7) Nomination and election of commission members is as provided  
25 for in this subsection (7).

26 (a) Not earlier than March 18th and not later than April 2nd of  
27 each year, the commission shall give notice by mail to all producers in  
28 a district where a vacancy will occur, of such vacancy or such  
29 vacancies and call for nominations. Nominating petitions shall be  
30 signed by five persons qualified to vote for candidates. The notice  
31 shall state the final date for filing petitions, which shall be not  
32 earlier than April 7th and not later than April 12th of each year.

33 (b) The commission shall mail ballots to all affected producers in  
34 the district in which the vacancy will occur not earlier than April  
35 17th and not later than May 2nd of each year. Ballots shall be  
36 postmarked not later than June 1st of that year. The mailed ballot  
37 shall be conducted in a manner so that it shall be a secret ballot in

1 accordance with rules adopted by the commission. An affected producer  
2 is entitled to one vote.

3 (8) The members of the commission not elected by the producers  
4 shall be elected by a majority of the commission within ninety days  
5 before the expiration of the member's term.

6 (9)(a) To fill a vacancy caused by the failure to qualify of a  
7 person elected by the producers as a member of the commission, or in  
8 the event of the death, removal, resignation, or disqualification of  
9 any elected member, the commission shall call for nominations and give  
10 notice by mail to all producers in the district where the vacancy  
11 occurred. A valid nominating petition must be signed by at least five  
12 persons qualified to vote for the nominated candidate and must be  
13 returned to the commission. The notice shall state the final date for  
14 filing a nomination petition. If more than one valid nomination is  
15 submitted, the commission shall conduct an election and mail ballots to  
16 all producers in the district where the vacancy occurred.

17 (b) To fill vacancies caused by reasons other than the expiration  
18 of an appointed term, the new commission members shall be elected by  
19 the commission at its first or second meeting after the occurrence of  
20 the vacancy.

21 (c) In the event that a nomination process for the beginning of a  
22 term of an elected member concludes with no candidate, a new member  
23 shall be appointed by the commission. The appointment shall be made at  
24 the commission's first or second meeting after the expiration of the  
25 previous term.

26 NEW SECTION. **Sec. 4.** The commission may:

- 27 (1) Administer, enforce, and implement this chapter;
- 28 (2) Elect a chair and such other officers as the commission may  
29 deem advisable and select subcommittees of commission members;
- 30 (3) Employ and discharge at its discretion an executive director,  
31 additional personnel, attorneys, consultants, research agencies, and  
32 other persons and firms that it may deem appropriate, and compensate  
33 its employees;
- 34 (4) Acquire personal property and lease office space and other  
35 necessary real property and transfer and convey the same;
- 36 (5) Institute and maintain in its own name any and all legal

1 actions, including actions by injunction, mandatory injunction, or  
2 civil recovery, or proceedings before administrative tribunals or other  
3 governmental authorities necessary to implement this chapter;

4 (6) Keep accurate records of all its receipts and disbursements,  
5 which records shall be open to inspection, and make annual reports  
6 therefrom to the state auditor;

7 (7) Borrow money and incur indebtedness;

8 (8) Make necessary disbursements for routine operating expenses;

9 (9) Collect the assessments of producers as provided in this  
10 chapter and expend the same in accordance with and to effectuate the  
11 purposes of this chapter;

12 (10) To prepare a budget or budgets covering anticipated income and  
13 expenses to be incurred in carrying out the provisions of this chapter  
14 during each fiscal year;

15 (11) Accept and receive gifts and grants from private persons or  
16 private and public agencies and expend the same to effectuate the  
17 purposes of this chapter;

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

21 (13) Enter into contracts or interagency agreements with any  
22 private or public agency, whether federal, state, or local, to carry  
23 out the purposes of this chapter; however, personal service contracts  
24 must comply with chapter 39.29 RCW;

25 (14) Enter into contracts or agreements for research and education  
26 in the production, irrigation, processing, transportation, use,  
27 distribution, and trade barriers impacting potatoes and potato  
28 products;

29 (15) Retain in emergent situations the services of private legal  
30 counsel to conduct legal actions on behalf of the commission;

31 (16) Participate in international, federal, state, and local  
32 hearings, meetings, and other proceedings relating to the production,  
33 irrigation, manufacture, regulation, transportation, trade,  
34 distribution, sale, or use of potatoes as requested by any elected  
35 official or officer or employee of any agency and as authorized under  
36 RCW 42.17.190, including the reporting of those activities to the  
37 public disclosure commission;

1 (17) Assist and cooperate with the department or any other local,  
2 state, or federal government agency in the investigation and control of  
3 exotic pests and diseases that could damage or affect trade and export  
4 of potatoes;

5 (18) Acquire or own intellectual property rights, licenses, or  
6 patents and collect royalties resulting from commission-funded research  
7 related to potatoes;

8 (19) Engage in appropriate fund-raising activities for the purpose  
9 of supporting activities of the commission authorized by this chapter;

10 (20) Establish a foundation using commission funds as grant money  
11 for the purposes established in this chapter;

12 (21) Maintain a list of the names and addresses of affected  
13 producers that may be compiled from information used to collect  
14 assessments under this chapter and data on the value of each producer's  
15 production under this chapter. This list may be compiled from  
16 information used to collect producer assessments for a three-year  
17 period;

18 (22) Maintain a list of the names and addresses of persons who  
19 handle potatoes within the affected area and data on the amount and  
20 value of the potatoes handled by each person under this chapter for a  
21 minimum three-year period;

22 (23) Check records of producers or handlers of potatoes during  
23 normal business hours to determine whether the appropriate assessment  
24 has been paid; and

25 (24) Exercise such other powers and perform such other duties as  
26 are necessary and proper to effectuate the purposes of this chapter.

27 NEW SECTION. **Sec. 5.** (1) The commission shall by resolution  
28 establish a headquarters, which shall continue as the headquarters  
29 until changed by the commission, where the books, records, and minutes  
30 of the commission meetings shall be kept.

31 (2) Any action taken by the commission requires the majority vote  
32 of the members present, and a quorum must be present.

33 (3) A quorum of the commission consists of at least nine members.

34 (4)(a) Members of the commission shall be compensated in accordance  
35 with RCW 43.03.230. Members and employees of the commission shall  
36 receive travel expenses in accordance with RCW 43.03.050 and 43.03.060



1 for each day spent in actual attendance at or traveling to and from  
2 meetings of the commission or on special assignments for the  
3 commission.

4 (b) Members and employees may be reimbursed for actual travel  
5 expenses incurred in carrying out this chapter as provided by rules  
6 adopted by the commission. In developing these rules, the commission  
7 shall review the special allowances for foreign travel and other travel  
8 involving higher than usual costs for subsistence and lodging adopted  
9 by the office of financial management as provided in RCW 43.03.050(1).

10 (5) In addition to notice of meetings of the commission as required  
11 by the open public meetings act, chapter 42.30 RCW, notice of the  
12 meetings shall also be published in the commission newsletter and sent  
13 to appropriate general and agricultural media outlets.

14 NEW SECTION. **Sec. 6.** Obligations incurred by the commission and  
15 any other liabilities or claims against the commission may be enforced  
16 only against the assets of the commission in the same manner as if it  
17 were a corporation. No liability for the debts or actions of the  
18 commission exist against either the state of Washington or any  
19 subdivision or instrumentality thereof or the assets thereof or against  
20 any member officer, employee, or agent of the commission in his or her  
21 individual capacity. The members of the commission, including  
22 employees thereof, may not be held responsible individually in any way  
23 whatsoever to any person for errors in judgment, mistakes, or other  
24 acts, either of commission or omission, as principal agent, person, or  
25 employee, except for their own individual acts of dishonesty or crime.  
26 No such person or employee may be held responsible individually for any  
27 act or omission of any other member of the commission. Liability of  
28 the members of the commission is several and not joint and no member is  
29 liable for the default of any other member.

30 NEW SECTION. **Sec. 7.** The purpose of this chapter is to promote  
31 the general welfare of the state and maintain and protect existing  
32 markets, increase production efficiency, ensure a fair regulatory  
33 environment, and increase use and consumption of potatoes produced in  
34 Washington. The commission shall conduct the programs in this section  
35 in accordance with this chapter.

1 (1) The commission may investigate and take necessary action to  
2 prevent or eliminate unfair trade and regulatory barriers and practices  
3 and correct, where possible, trade and regulatory barriers and  
4 practices that hinder the sale, production, transport, and export of  
5 Washington-produced potatoes or potato products. If the commission  
6 finds as a result of the investigation that trade, regulatory, or  
7 transportation barriers are restricting the free flow of potatoes  
8 produced in this state, the commission may institute appropriate action  
9 before any agency or body deemed necessary to correct the situation.  
10 Information acquired in an investigation is confidential and may be  
11 released only to the extent necessary to effectuate the purposes of  
12 this chapter, including but not limited to information regarding:

13 (a) The prevention, modification, or elimination of trade and  
14 regulatory barriers that restrict or inhibit the production, transport,  
15 consumption, export, or sale of potatoes produced in this state;

16 (b) Presentation of technical information or facts to and  
17 negotiations with state, federal, or foreign governmental agencies on  
18 matters that affect the production, irrigation, transport, use,  
19 consumption, export, or sale of potatoes grown in this state, including  
20 cooperation with any agency or group in efforts to increase consumption  
21 or use of potatoes, and such other activities and programs that are  
22 consistent with the objectives of this chapter; and

23 (c) Investigating transportation rates and service costs.

24 (2)(a) The commission, subject to the provisions of this chapter,  
25 may carry on or cause to be carried on any necessary and proper  
26 production, irrigation, processing, transportation, export, handling,  
27 or use of research or survey studies relating to potatoes and may  
28 expend moneys for those purposes.

29 (b) The commission may engage in research and survey studies  
30 including, but not limited to:

31 (i) Production problems, such as those associated with soil, seed,  
32 and crop protection tools;

33 (ii) Developing and testing new potato cultivars with improved  
34 disease-resistance, processing, nutritional, or horticultural  
35 characteristics;

36 (iii) Improving techniques and methods of harvesting potatoes;

37 (iv) Developing and improving methods of processing potatoes and

1 potato by-products for the purpose of increasing and expanding their  
2 use for food and industrial purposes;

3 (v) Improving packing and handling techniques that promote more  
4 efficient operation in the transport, trade, and distribution of  
5 potatoes;

6 (vi) Determining any special nutritive, nutraceutical, or  
7 pharmaceutical qualities of potatoes produced in Washington; and

8 (vii) Conducting surveys and other research regarding production  
9 practices, resource requirements and availability, and any other issues  
10 or matters that may impact the continued production of potatoes in  
11 Washington.

12 (c) The commission may, in addition to the activities in (b) of  
13 this subsection, engage in any other proper and necessary research and  
14 survey programs and activities consistent with and subject to the  
15 limitations of this chapter. The research and survey studies may  
16 include the collection of data and information relating to potatoes;  
17 the analysis of the data and information; the dissemination of the  
18 data, information, and analysis; and other investigation that falls  
19 within the scope of the production, irrigation, use, processing,  
20 transportation, or handling of potatoes.

21 (d) The commission, subject to this chapter, may coordinate the  
22 state's potato crop protection chemical registrations and integrated  
23 pest management implementation.

24 (3)(a) The commission may adopt rules, in accordance with chapter  
25 34.05 RCW, to define, establish, and provide labeling requirements for  
26 improving standards and grades for potatoes and may expend moneys for  
27 such purposes.

28 (b) The commission shall give reasonable written notice to all  
29 producers, handlers, and persons directly affected by the labeling  
30 requirements issued under this section, in accordance with rule-making  
31 proceedings conducted under chapter 34.05 RCW.

32 (c) The commission may cooperate with state and federal agencies or  
33 departments responsible for revising and modernizing grades and  
34 standards and labeling of potatoes.

35 (d) This section does not authorize the commission to set minimum  
36 grades, sizes, or maturity of potatoes that a producer may sell, offer  
37 for sale, or ship.

1 (4) The commission may conduct programs for the purpose of  
2 providing factual and accurate information and education to the public  
3 including:

4 (a) The economic, environmental, and nutritional value and benefits  
5 of potatoes and the Washington potato industry;

6 (b) The quality, care, and methods used in the production of  
7 Washington potatoes;

8 (c) The handling, preparation, and use of Washington potatoes and  
9 potato products; and

10 (d) The effects of trade, transportation, and regulatory barriers  
11 on the Washington potato industry.

12 (5) The commission may conduct programs for the purpose of  
13 providing information and education to the Washington potato industry  
14 including:

15 (a) Public opinion or awareness research information for producers  
16 of potatoes;

17 (b) Industry-related education and training; and

18 (c) Information and services enabling producers to meet resource  
19 conservation objectives and keep current with issues impacting their  
20 business.

21 (6) The commission may, subject to this chapter, provide  
22 information and communicate on matters pertaining to the production,  
23 irrigation, processing, transportation, trade, or uses of potatoes  
24 produced in Washington state, as requested by any elected official or  
25 officer or employee of any agency.

26 NEW SECTION. **Sec. 8.** (1) An assessment shall be levied and  
27 collected by the commission of four cents per hundredweight upon all  
28 potatoes sold, processed, delivered for sale or processing by a  
29 producer, or stored or delivered for storage when storage or delivery  
30 for storage is outside the state. The assessment may be decreased or  
31 increased at any time subject to a referendum approved by affected  
32 potato producers in accordance with this chapter. The assessment shall  
33 be paid by the producer. No assessment may be collected on:

34 (a) Potatoes grown and sold for seed under an established seed  
35 certification program;

36 (b) Potatoes sold for livestock feed, regardless of grade;

37 (c) Potatoes sold for nonfood products, such as industrial starch;

1 (d) Potatoes of a producer's own production used by the producer on  
2 the producer's own premises for seed, feed, or personal consumption;

3 (e) Potatoes donated or shipped for relief or charitable purposes;  
4 or

5 (f) Potatoes sold by a producer whose production is less than five  
6 hundred pounds per year.

7 (2)(a) All assessments made and levied under this chapter apply to  
8 the respective producer who is primarily liable therefor.

9 (i) Handlers receiving potatoes from the producer, including, but  
10 not limited to, warehousemen, shippers, and processors that collect  
11 assessments from producers whose production they handle, shall pay  
12 assessments collected to the commission on or before the twentieth day  
13 of the succeeding month for the previous month's collections. On a  
14 monthly basis, each handler shall file with the commission a return  
15 under oath on forms to be furnished by the commission, stating the  
16 quantity of potatoes handled, processed, delivered, or shipped during  
17 the period prescribed by the commission.

18 (ii) Any person, producer, or handler subject to the payment of  
19 assessments shall give adequate assurance or security concerning the  
20 payments to the commission.

21 (b) On or before the beginning of each fiscal year, the commission  
22 shall give reasonable notice to all producers, handlers, and other  
23 affected persons of the method or methods of collection to be used for  
24 that fiscal year on field run or ungraded potatoes.

25 (c) No affected units of potatoes may be transported, carried,  
26 shipped, sold, stored, or otherwise handled or disposed of until every  
27 due and payable assessment under this chapter has been paid and the  
28 receipt issued or stamp canceled. No liability under this chapter  
29 attaches to common carriers in the regular course of their business.  
30 When any potatoes for which an exemption as provided in subsection (1)  
31 of this section is claimed are shipped either by railroad or truck, the  
32 reasons for the exemption shall be plainly noted on the bill of lading,  
33 shipping document, container, or invoice.

34 (d) Any producer or handler who fails to comply with this  
35 subsection is guilty of violating this chapter and is subject to the  
36 penalty, collection, and liability provisions of this chapter.

37 (3)(a) Moneys collected by the commission under this chapter as

1 assessments shall be used by the commission only for the purposes of  
2 paying for the costs or expenses arising in connection with carrying  
3 out the purposes and provisions of this chapter.

4 (b) At the end of each fiscal year the commission shall credit each  
5 producer with any amount paid by the producer in excess of three  
6 percent of the total market value of all potatoes sold, processed, or  
7 delivered for sale or processing during that period. Refunds may be  
8 made only upon satisfactory proof given by the producer, which may  
9 include bills of lading, bills of sale, or receipts.

10 NEW SECTION. **Sec. 9.** Assessments shall be levied upon potatoes  
11 sold on a field run or ungraded basis as provided in this section.

12 (1) If payment to the grower for the potatoes is based upon the  
13 gross weight of potatoes sold and not upon the yield of any particular  
14 grade of potatoes as determined by any type of sorting or inspection,  
15 then the assessment is made on ninety percent of the gross  
16 hundredweight of potatoes so sold.

17 (2) If payment to the grower for the potatoes is based upon the net  
18 weight of potatoes intended for human consumption derived from the  
19 potatoes so sold as determined by any type of sorting or inspection,  
20 then the assessment is made on the total net weight of potatoes  
21 intended for human consumption.

22 NEW SECTION. **Sec. 10.** This section establishes the procedure for  
23 reporting and paying assessments levied under this chapter.  
24 Assessments shall be paid in accordance with one or more of the  
25 following methods as prescribed by the commission, in its discretion,  
26 for each affected producer or handler:

27 (1) By means of collection from producers by handlers, including  
28 warehousemen, packers, and processors receiving potatoes from  
29 producers, at the time the potatoes are first handled, and payment of  
30 assessments by those handlers to the commission:

31 (a) The commission shall bill each handler at such intervals, at  
32 least monthly, as the commission may from time to time determine, for  
33 the assessments due upon potatoes handled in the preceding period for  
34 which billing has not previously been made, and upon which assessments  
35 have not been paid, computed on the basis of the quantity of potatoes  
36 so handled as recorded on potato shipping pertaining to each handler

1 prepared by the department on behalf of the commission, and filed with  
2 the commission, or with respect to handlers who are packers or  
3 processors, on the basis of the quantity of potatoes so handled as  
4 recorded on potato shipping records pertaining to such packer or  
5 processor prepared by such processor and filed with the commission;

6 (b) As used in (a) of this subsection, "handler" is the person,  
7 firm, or corporation designated as shipper on the potato shipping  
8 record form;

9 (c) In the event potatoes subject to assessment are handled by  
10 processors or other handlers under circumstances in which no potato  
11 shipping record is filed with the commission, with respect to the  
12 potatoes so handled the handler shall, at the time of submitting the  
13 report required by (d) of this subsection, pay in full the assessment  
14 on the potatoes so reported;

15 (d) Each handler shall file a monthly report, under oath, on forms  
16 provided by the commission, showing the name and address of the handler  
17 making the report, the quantity of potatoes handled during the  
18 preceding calendar month, the name, address, handler's lot number, and  
19 quantity of potatoes handled, for each respective producer, and the  
20 representative district in which the potatoes were grown. The report  
21 shall be filed with the commission not later than the twentieth day of  
22 the month following that in which the potatoes were handled; or

23 (2) By means of payment in cash by the producer or handler, as  
24 determined by the commission in each respective instance, before the  
25 time the potatoes are shipped in either interstate or intrastate  
26 commerce.

27 NEW SECTION. **Sec. 11.** Any due and payable assessment levied under  
28 this chapter, and every sum due in a specified amount under this  
29 chapter constitutes a personal debt of every person so assessed or who  
30 otherwise owes the same, and the amount is due and payable to the  
31 commission when payment is called for by the commission. In the event  
32 that any assessment is not paid within ninety days after the date of  
33 the billing by the commission, or within ninety days after the due date  
34 of the report required by this chapter, a sum equal to ten percent of  
35 the unpaid assessment or unpaid portion thereof shall be added to the  
36 original amount and is due and owing to the commission. In the event  
37 of failure of a person or persons to pay any such due and payable

1 assessment or other sum, the commission may bring a civil action  
2 against the person or persons in a state court of competent  
3 jurisdiction for the collection thereof, together with the additional  
4 ten percent as provided in this section, and the action shall be tried  
5 and judgment rendered as in any other cause of action for debt due and  
6 payable.

7 NEW SECTION. **Sec. 12.** (1)(a) Any handler handling potatoes for  
8 fresh market who has not established a record of prompt payment of  
9 assessments due on fresh market potatoes in accordance with this  
10 chapter must prepay the assessments due the commission.

11 (b) The amount of prepayment shall be determined on the estimated  
12 basis of the potatoes the handler will handle during the first thirty  
13 days of the potato shipping season, or if the handler has shipped in  
14 the immediately prior potato shipping season, the prepayment shall be  
15 based on the highest thirty-day assessment due the commission during  
16 that shipping season. Prepayment shall not exceed twenty-five percent  
17 of the total estimated annual assessment payable by the handler.

18 (2) Any handler who has established a record of prompt payment  
19 during the entire previous potato shipping season and continues to  
20 maintain a record of prompt payment is not subject to the prepayment  
21 requirements in subsection (1) of this section.

22 NEW SECTION. **Sec. 13.** The commission shall notify the department  
23 in writing of any handler who has not established a record of prompt  
24 payment as set forth in this chapter, and that handler is subject to  
25 this section. No affected units of potatoes shall be transported,  
26 carried, shipped, sold, stored or otherwise handled or disposed of  
27 until every due and payable assessment herein provided for has been  
28 paid and the receipt issued, but no liability hereunder shall attach to  
29 common carriers in the regular course of their business. When any  
30 potatoes for which exemption as provided in this chapter is claimed are  
31 shipped either by railroad or truck, there shall be plainly noted on  
32 the bill of lading, shipping document, container or invoice, the  
33 reasons for such exemptions.

34 NEW SECTION. **Sec. 14.** (1) Commission expenditures for



1 agricultural development or trade promotion and promotional hosting  
2 shall be pursuant to specific budget items as approved by the  
3 commission at annual public hearings on the commission budget.

4 (2) Individual commissioners and commission staff shall make  
5 agricultural development or trade promotion and promotional hosting  
6 expenditures, or seek reimbursements for those expenditures, only in  
7 those instances where the expenditures have been approved by the  
8 commission.

9 (3) All payments and reimbursements shall be as identified and  
10 supported by vouchers to which receipts are attached. Voucher forms  
11 will be supplied by the commission, and require the following  
12 information:

13 (a) Name and position of each person hosted, however in the case of  
14 a group of twenty-five or more persons, then only the name of the group  
15 hosting shall be required;

16 (b) General purpose of the hosting;

17 (c) Date of hosting;

18 (d) To whom payment was or will be made; and

19 (e) Signature of person seeking payment or reimbursement;

20 (4) The chair of the commission, the executive director of the  
21 commission, or assistant executive director of the commission may  
22 approve direct payment or reimbursements submitted in accordance with  
23 this section.

24 (5) The following persons may be hosted when it is reasonably  
25 believed such hosting will promote trade for the Washington state  
26 potato industry, as long as the hosting does not violate federal or  
27 state conflict of interest laws:

28 (a) Individuals from private business and accompanying interpreter  
29 or interpreters;

30 (b) Foreign government officials and accompanying interpreter or  
31 interpreters;

32 (c) Federal, state, and local officials, however lodging, meals,  
33 and transportation may not be provided when those officials may obtain  
34 reimbursement for these expenses from their government employer;

35 (d) The general public, at meetings and gatherings open to the  
36 general public;

37 (e) Commissioners and employees of the commission when their

1 attendance at meetings, meals, and gatherings at which the persons  
2 described in (a) through (d) of this subsection are being hosted will  
3 promote trade for the Washington state potato industry.

4 NEW SECTION. **Sec. 15.** (1) It is a misdemeanor for:

5 (a) Any person willfully to violate any provision of this chapter;

6 (b) Any person willfully to render or furnish a false or fraudulent  
7 report, statement of record required by the commission under this  
8 chapter, or any rule of the commission or rule of the department  
9 adopted under this chapter, or willfully to fail or refuse to furnish  
10 or render any such report, statement, or record so required.

11 (2) In the event of violation or threatened violation of any  
12 provision of this chapter or any rule of the commission or rule of the  
13 department adopted under this chapter, the commission is entitled to an  
14 injunction to prevent further violation and to a decree of specific  
15 performance of such rules, and to a temporary restraining order and  
16 injunction pending litigation upon filing a verified complaint and  
17 sufficient bond.

18 (3) All persons subject to this chapter shall severally from time  
19 to time, upon the request of the commission, furnish the commission  
20 with such information necessary to effectuate the policies of this  
21 chapter or to ascertain and determine the extent to which this chapter  
22 has been carried out or has effectuated such policies and purposes, or  
23 to determine whether or not there has been any abuse of the privilege  
24 of exemptions from laws relating to trusts, monopolies, and restraints  
25 of trade. Such information shall be furnished in accordance with forms  
26 and reports to be prescribed by the commission. For the purpose of  
27 ascertaining the correctness of any report made to the commission under  
28 this section or for the purpose of obtaining the information required  
29 in any such report where it has been requested and has not been  
30 furnished, the commission is authorized to examine such books, papers,  
31 records, copies of tax reports, accounts, correspondence, contracts,  
32 documents, or memoranda as the commission deems relevant and that are  
33 within the control of any such person from whom such report was  
34 requested, or of any person having, either directly or indirectly,  
35 actual or legal control of or over such person or such records, or of  
36 any subsidiary of any such person. To carry out the purposes of this  
37 section, the commission, upon giving due notice, may hold hearings,

1 take testimony, administer oaths, subpoena witnesses, and issue  
2 subpoenas for the production of books, records, documents, or other  
3 writings of any kind, and shall apply with respect to any such hearing,  
4 together with such other rules consistent therewith as the commission  
5 may from time to time prescribe.

6 NEW SECTION. **Sec. 16.** Moneys collected by the commission under  
7 this chapter from any assessment or as an advance deposit thereon shall  
8 be used by the commission only for the purpose of paying for the costs  
9 or expenses arising in connection with carrying out the purposes and  
10 provisions of this chapter.

11 If the commission is ever terminated any and all moneys remaining  
12 with the commission operating under this chapter and not required to  
13 defray expenses or repay obligations incurred by that commission shall  
14 be returned to the affected producers in proportion to the assessments  
15 paid by each in the two-year period preceding the date of the  
16 termination.

17 NEW SECTION. **Sec. 17.** If after complying with the procedures  
18 outlined in this chapter and a referendum proposal to terminate the  
19 commission is assented to, the commission shall:

20 (1) Document the details of all measures undertaken to terminate  
21 the commission and identify and document all closing costs;

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

25 (3) Provide for the reimbursement to affected producers of moneys  
26 collected by assessment. Reimbursement shall be made to those  
27 considered affected producers over the previous three-year time frame  
28 on a pro rata basis and at a percent commensurate with their volume of  
29 production over the previous three-year period. If the commission  
30 finds that the amounts of moneys are so small as to make impractical  
31 the computation and remitting of the pro rata refund, the moneys shall  
32 be paid into the state treasury as unclaimed trust moneys; and

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

1        NEW SECTION.    **Sec. 18.** Any due and payable assessment levied under  
2 this chapter, and every sum due under this chapter in a specified  
3 amount constitutes a personal debt of every person so assessed or who  
4 otherwise owes the same, and the same shall be due and payable to the  
5 commission when payment is called for by the commission. In the event  
6 any person fails to pay the full amount of the assessment or such other  
7 sum on or before the date due, the commission may add to the unpaid  
8 assessment or sum an amount not exceeding ten percent of the same to  
9 defray the cost of enforcing collection of it. In the event of failure  
10 of such person or persons to pay any such due and payable assessment or  
11 other such sum, the commission may bring a civil action against such  
12 person or persons in a state court of competent jurisdiction for the  
13 collection thereof, together with the above specified ten percent  
14 thereon, and such action shall be tried and judgment rendered as in any  
15 other cause of action for debt due and payable.

16        NEW SECTION.    **Sec. 19.** All moneys that are collected or otherwise  
17 received under this chapter shall be used solely by and for the  
18 commission and shall not be used for any other commission, nor the  
19 department except as otherwise provided in this chapter. Such moneys  
20 shall be deposited in a separate account or accounts in the name of the  
21 commission in any bank that is a state depository. All expenses and  
22 disbursements incurred and made under the provisions of this chapter  
23 shall be paid from moneys collected and received under this chapter  
24 without the necessity of a specific legislative appropriation and all  
25 moneys shall be paid from the account by check or voucher in such form  
26 and in such manner and upon the signature of such person as may be  
27 prescribed by the commission. The provisions of RCW 43.01.050 do not  
28 apply to any such account or any moneys so received, collected, or  
29 expended.

30        NEW SECTION.    **Sec. 20.** (1) Any funds of the commission may be  
31 invested in savings or time deposits in public depositories defined in  
32 chapter 39.58 RCW.

33        (2) This section applies to all funds that may be lawfully so  
34 invested, that in the judgment of the commission are not required for  
35 immediate expenditure. The authority granted by this section is not  
36 exclusive and shall be construed to be cumulative and in addition to

1 other authority provided by law for the investment of such funds,  
2 including, but not limited to, authority granted under chapters 39.58,  
3 39.59, and 43.84 RCW.

4 NEW SECTION. **Sec. 21.** Every administrator, employee, or other  
5 person occupying a position of trust with the commission and every  
6 member actually handling or drawing upon funds shall give a bond in  
7 such penal amount as may be required by the commission, the premium for  
8 which bond or bonds shall be paid by the commission.

9 NEW SECTION. **Sec. 22.** (1) Pursuant to RCW 42.17.31907, certain  
10 agricultural business records, commodity commission records, and  
11 department of agriculture records relating to commodity commissions and  
12 producers of agricultural commodities are exempt from public  
13 disclosure.

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

19 (3) This chapter does not prohibit:

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

23 (b) The publication by the commission of the name of any person  
24 violating this chapter and a statement of the manner of the violation  
25 by that person.

26 NEW SECTION. **Sec. 23.** (1) The commission shall prepare a list of  
27 all affected producers from any information available from the  
28 department, producers, producer associations, organizations, or  
29 handlers of potatoes. This list shall contain the names and addresses  
30 of all affected persons who produce the potatoes and the amount, by  
31 unit, of the potatoes produced during at least the past three years.

32 (2) The commission shall prepare a list of all persons who handle  
33 potatoes and the amount of potatoes handled by each person during at  
34 least the past three years.

1 (3) It is the responsibility of all affected parties to ensure that  
2 their correct address is filed with the commission. It is also the  
3 responsibility of affected parties to submit production data and  
4 handling data to the commission as prescribed by the commission's rules  
5 or policies.

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

11 (5) The commission shall maintain a certified list of affected  
12 producers or affected handlers from its records. The list shall  
13 contain all information required to conduct a referendum or commission  
14 member elections under this chapter.

15 (6) For all purposes of giving notice and holding referenda on  
16 amendment or termination proposals, and for giving notice and electing  
17 or selecting members of the commission, the applicable list corrected  
18 up to the day preceding the date the list is certified by the  
19 commission is deemed to be the list of all affected producers or  
20 affected handlers, as applicable, entitled to notice or to vote.  
21 Inadvertent failure to notify an affected producer or handler does not  
22 invalidate a proceeding conducted under this chapter.

23 NEW SECTION. **Sec. 24.** Any member of a commission may also be a  
24 member or officer of an association that has the same objectives for  
25 which the commission was formed. The commission may also contract with  
26 such association for services necessary to carry out any purposes  
27 authorized under this chapter, if an appropriate contract has been  
28 entered into.

29 NEW SECTION. **Sec. 25.** Nothing in this chapter permits the fixing  
30 of prices not otherwise permitted by law or any limitation on  
31 production and no agreement or any rule thereunder may contain any such  
32 provisions.

33 NEW SECTION. **Sec. 26.** (1) Upon completion of any vote,  
34 referendum, or nomination and elections, the commission shall tally the  
35 results of the vote and provide the results to affected parties.

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

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

8 NEW SECTION. **Sec. 27.** The members of the commission may, subject  
9 to approval by two-thirds of the voting members of the commission,  
10 suspend for a period not exceeding one crop-year at a time all or part  
11 of the assessments on potatoes subject to this chapter.

12 NEW SECTION. **Sec. 28.** The commission may adopt rules necessary to  
13 carry out the duties and responsibilities under this chapter including,  
14 but not limited to:

15 (1) The issuance, amendment, suspension, or termination of rules  
16 associated with this chapter;

17 (2) Procedural, technical, or administrative rules that may address  
18 and include, but are not limited to:

19 (a) Nominations conducted under this chapter; and

20 (b) Elections of commission members or referenda conducted under  
21 this chapter.

22 NEW SECTION. **Sec. 29.** (1) The substance of a petition received  
23 under this chapter to amend or terminate commission programs or  
24 assessments shall be set out in detail and designated as the proposal.  
25 A copy of the proposal shall be mailed to all affected parties or  
26 producers based on the list provided for under this chapter, as  
27 applicable, and shall be posted on the commission's web site.

28 (2) Notice of a public hearing to amend or terminate the commission  
29 shall be published in the form of a legal notice for a period of two  
30 days in a newspaper of general circulation within the affected areas,  
31 as the commission may prescribe. The notice must also be posted on the  
32 commission's web site. The commission shall mail a copy of the public  
33 hearing notice along with a copy of the proposal as provided in  
34 subsection (1) of this section to all affected parties or affected  
35 producers, as applicable, who may be directly affected by the proposal

1 and whose names and addresses appear on the list compiled under this  
2 chapter. The mailing must include the commission's web site address  
3 along with a description of the process for the amendment or  
4 termination of the commission, as applicable.

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

17 (4) The commission has the power to subpoena witnesses and to issue  
18 subpoenas for the production of any books, records, or documents of any  
19 kind.

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



1 If it appears to the court that the subpoena was regularly issued, it  
2 shall enter an order that the witness appear at the time and place  
3 fixed in the order and testify or produce the required papers, and on  
4 failing to obey the order, the witness shall be dealt with as for  
5 contempt of court.

6 NEW SECTION. **Sec. 30.** (1) The commission shall make findings upon  
7 material points controverted at the hearing and required by this  
8 chapter and upon such other matters and things as it may deem fitting  
9 and proper. Based upon those findings, the commission shall make  
10 conclusions and develop and issue a recommended decision. The  
11 findings, conclusions, and recommended decision, and the full text of  
12 the proposal shall be posted on the commission's web site.

13 (2) The recommended decision may deny or approve the proposal in  
14 its entirety, or it may recommend a rule containing other or different  
15 terms or conditions from those contained in the proposal, however any  
16 such rule shall be of a kind or type substantially within the purview  
17 of the notice of hearing and shall be supported by evidence taken at  
18 the hearing or by documents of which the commission is authorized to  
19 take official notice. The commission shall not approve the amendment  
20 or termination if it finds with respect thereto:

21 (a) That the proposed issuance, amendment, or termination thereof  
22 is reasonably calculated to attain the objective sought in a rule;

23 (b) That the proposed issuance, amendment, or termination is in  
24 conformity with this chapter and, within the applicable limitations and  
25 restrictions in this chapter, will tend to effectuate its declared  
26 purposes and policies; and

27 (c) That the interests of consumers of potatoes are protected in  
28 that the powers of this chapter are being exercised only to the extent  
29 necessary to attain such objectives.

30 (3) If the commission's recommended decision does not make any  
31 changes to the proposal, notification will be made by mail in the form  
32 of a postcard reciting the recommended decision. The postcard must  
33 also include the commission's web site address where any person can  
34 access the full text of the findings, conclusions, and recommended  
35 decision.

36 (4) If the commission's recommended decision makes changes to the  
37 proposal or does not support the proposal, notification will be made by

1 mail in the form of a letter describing the changes made or explaining  
2 the reason for not supporting the proposal and a referendum. The  
3 letter must also include the commission's web site address where any  
4 person can access the full text of the findings, conclusions, and  
5 recommended decision.

6 (5) After the commission issues its findings, conclusions, and  
7 recommended decision, all interested parties shall have a period of not  
8 less than fifteen days from the date of the mailing of the postcard or  
9 letter to file statements with the commission in support of or in  
10 opposition to the recommended decision. The commission shall consider  
11 the additional statements and shall issue its final decision. The  
12 final decision may be the same as the recommended decision or may be  
13 revised in light of the additional information received in response to  
14 the recommended decision. The commission shall notify affected parties  
15 of its final decision by mail in the form of a postcard. Notification  
16 shall include the commission's web site address where any person can  
17 access the full text of the findings, conclusions, and final decision  
18 and the full text of the final proposal. If the final decision denies  
19 the proposal in its entirety, no further action may be taken by the  
20 commission.

21 (6) Affected parties who do not have access to materials posted on  
22 the commission's web site may request notification by fax or mail.

23 NEW SECTION. **Sec. 31.** After the commission issues its final  
24 decision approving the amendment or termination, the commission shall  
25 determine by a referendum whether the affected parties or producers  
26 assent to the proposed action or not. The commission shall conduct the  
27 referendum among the affected parties or producers based on the list as  
28 provided for in this chapter, as applicable. The affected parties or  
29 producers shall be deemed to have assented to the proposed issuance or  
30 termination order if fifty-one percent or more by number reply to the  
31 referendum within the time specified by the commission, and if, of  
32 those replying (a) sixty-five percent or more by number and fifty-one  
33 percent or more by volume assent to the proposed order; or (b) sixty  
34 percent or more by number and sixty percent or more by volume of those  
35 replying assent to the proposed order. The determination by volume  
36 shall be made on the basis of volume as determined in the list of  
37 affected producers created under this chapter, subject to rules of the

1 commission for such determination. Results of the referendum shall be  
2 mailed to all affected parties in the form of a postcard. If the  
3 requisite assent is given, the commission shall adopt the order.

4 NEW SECTION. **Sec. 32.** (1) All rule-making proceedings conducted  
5 under this chapter shall be in accordance with chapter 34.05 RCW.

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

10 (3) The commission may adopt amendments to rules associated with  
11 this chapter without conducting a referendum if the amendments are  
12 adopted under the following criteria:

13 (a) The proposed amendments relate only to internal administration  
14 of this chapter and are not subject to violation by 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 this chapter;

20 (c) The proposed amendments only correct typographical errors, make  
21 address or name changes, or clarify language of a rule in accordance  
22 with this chapter;

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

25 **Sec. 33.** RCW 15.66.270 and 1961 c 11 s 15.66.270 are each amended  
26 to read as follows:

27 Nothing in this chapter contained shall apply to:

28 (1) Any order, rule, or regulation issued or issuable by the  
29 Washington utilities and transportation commission or the interstate  
30 commerce commission with respect to the operation of common carriers;

31 (2) Any provision of the statutes of the state of Washington  
32 relating to the Washington apple (~~((advertising))~~) commission (chapter  
33 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW)  
34 (~~((or))~~), to the dairy products commission (chapter 15.44 RCW), or to the  
35 potato commission established in chapter 15.-- RCW (sections 1 through  
36 32 of this act). No marketing agreement or order shall be issued with

1 respect to apples, soft tree fruits (~~(or)~~), dairy products, or potatoes  
2 for human consumption, for the purposes specified in RCW 15.66.030(1)  
3 or 15.66.030(2).

4 NEW SECTION. Sec. 34. (1) The potato commission established in  
5 chapter 16-516 WAC is hereby abolished and its powers, duties, and  
6 functions are hereby transferred to the potato commission created in  
7 this act.

8 (2)(a) All reports, documents, surveys, books, records, files,  
9 papers, or written material in the possession of the potato commission  
10 established in chapter 16-516 WAC shall be transferred to the custody  
11 of the potato commission created by this act. All cabinets, furniture,  
12 office equipment, motor vehicles, and other tangible property employed  
13 by the potato commission established in chapter 16-516 WAC shall be  
14 made available to the potato commission created by this act. All  
15 funds, credits, or other assets held by the potato commission  
16 established in chapter 16-516 WAC shall be assigned to the potato  
17 commission created by this act.

18 (b) Any appropriations made to the potato commission established in  
19 chapter 16-516 WAC shall, on the effective date of this section, be  
20 transferred and credited to the potato commission created by this act.

21 (c) If any question arises as to the transfer of any personnel,  
22 funds, books, documents, records, papers, files, equipment, or other  
23 tangible property used or held in the exercise of the powers and the  
24 performance of the duties and functions transferred, the director of  
25 financial management shall make a determination as to the proper  
26 allocation and certify the same to the state agencies concerned.

27 (3) All employees of the potato commission established in chapter  
28 16-516 WAC are transferred to the jurisdiction of the potato commission  
29 created by this act. All members of the potato commission established  
30 in chapter 16-516 WAC shall continue as members of the potato  
31 commission established in chapter 16-516 WAC until their terms expire.

32 (4) All rules and all pending business before the potato commission  
33 established in chapter 16-516 WAC shall be continued and acted upon by  
34 the potato commission created by this act. All existing contracts and  
35 obligations shall remain in full force and shall be performed by the  
36 potato commission created by this act.

1 (5) The transfer of the powers, duties, functions, and personnel of  
2 the potato commission established in chapter 16-516 WAC shall not  
3 affect the validity of any act performed before the effective date of  
4 this section.

5 (6) If apportionments of budgeted funds are required because of the  
6 transfers directed by this section, the director of financial  
7 management shall certify the apportionments to the agencies affected,  
8 the state auditor, and the state treasurer. Each of these shall make  
9 the appropriate transfer and adjustments in funds and appropriation  
10 accounts and equipment records in accordance with the certification.

11 (7) Nothing contained in this section may be construed to alter any  
12 existing collective bargaining unit or the provisions of any existing  
13 collective bargaining agreement until the agreement has expired or  
14 until the bargaining unit has been modified by action of the personnel  
15 resources board as provided by law.

16 NEW SECTION. **Sec. 35.** Sections 1 through 32 of this act  
17 constitute a new chapter in Title 15 RCW.

18 NEW SECTION. **Sec. 36.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and takes effect  
21 July 1, 2005.

22 NEW SECTION. **Sec. 37.** If any section, subsection, sentence,  
23 clause, or part of this chapter is for any reason held to be invalid or  
24 unconstitutional, the judicial decision does not affect the remainder  
25 of the chapter and its application to other persons or circumstances.  
26 The legislature declares that each section, subsection, sentence,  
27 clause, and part of this chapter was enacted with the intent that if  
28 any portion of this chapter is severed, the remainder of the chapter is  
29 capable of accomplishing its legislative purpose.

--- END ---