
SUBSTITUTE HOUSE BILL 2367

State of Washington

62nd Legislature

2012 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Buys, Lytton, Chandler, Blake, Fagan, Wilcox, and Overstreet)

READ FIRST TIME 01/25/12.

1 AN ACT Relating to the dairy products commission; and amending RCW
2 15.44.010, 15.44.020, 15.44.021, 15.44.022, 15.44.027, 15.44.030,
3 15.44.032, 15.44.033, and 15.44.035.

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

5 **Sec. 1.** RCW 15.44.010 and 2002 c 313 s 88 are each amended to read
6 as follows:

7 ~~((As used in this chapter))~~ The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Commission" means the Washington state dairy products
10 commission~~((+))~~.

11 ~~((+))~~ (2) "Ship" means to deliver or consign milk or cream to a
12 person dealing in, processing, distributing, or manufacturing dairy
13 products for sale, for human consumption, or industrial or medicinal
14 uses~~((+))~~.

15 (3) "Handler" means ~~((one))~~ a person doing business in the state of
16 Washington who purchases milk, cream, or skimmed milk for processing,
17 manufacturing, sale, or distribution~~((+))~~.

18 (4) "Dealer" means ~~((one))~~ a person doing business in the state of

1 Washington who handles, ships, buys, and sells dairy products, or who
2 acts as sales or purchasing agent, broker, or factor of dairy
3 products((+)).

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

9 (6) "Processor" means a person doing business in the state of
10 Washington who uses milk or cream for canning, drying, manufacturing,
11 preparing, or packaging or for use in producing or manufacturing any
12 product therefrom((+)).

13 (7) "Producer" means a person doing business in the state of
14 Washington who produces milk from cows and sells it for human or animal
15 food, or medicinal or industrial uses((+)).

16 (8) "Maximum authorized assessment rate" means the level of
17 assessment most recently approved by a referendum of producers((+)).

18 (9) "Current level of assessment" means the level of assessment
19 paid by the producer as set by the commission which cannot exceed the
20 maximum authorized assessment rate.

21 (10) "Person" means an individual, firm, corporation, limited
22 liability company, trust, association, partnership, society, or any
23 other organization of individuals, or any unit or agency of local,
24 state, or federal government.

25 **Sec. 2.** RCW 15.44.020 and 2008 c 12 s 1 are each amended to read
26 as follows:

27 The ~~((dairy products))~~ commission shall be composed of ~~((not more~~
28 ~~than nine members. There shall be one member from each district who~~
29 ~~shall be a practical producer of dairy products and one member shall be~~
30 ~~a))~~ producers and at least one dealer. The director ~~((of agriculture))~~
31 shall be a voting member of the commission.

32 As used in this chapter, "director" means the director of
33 agriculture or his or her authorized representative.

34 **Sec. 3.** RCW 15.44.021 and 2008 c 12 s 2 are each amended to read
35 as follows:

36 (1) The director shall appoint the members of the commission.

1 (2) Candidates for producer member positions on the commission
2 shall be nominated under RCW 15.44.033. The director may select a
3 nominated candidate for a position or may reject all candidates.

4 (3) If two candidates are nominated, the director may choose one,
5 reject both, or call for an advisory vote between the two candidates.
6 In the event there are more than two candidates nominated for the
7 producer member positions, the director shall cause an advisory vote to
8 be held ((for the producer member positions)). Advisory ballots shall
9 be mailed to all ((affected)) producers in the district or area where
10 a vacancy is about to occur and shall be returned to the director not
11 less than thirty days prior to the commencement of the term. The
12 advisory ballot shall be conducted in a manner so that it is a secret
13 ballot. The names of the two candidates receiving the most votes in
14 the advisory vote shall be forwarded to the director for potential
15 appointment to the commission. ((In the event there are only two
16 candidates nominated for a position, an advisory vote may not be held
17 and the candidates' names shall be forwarded to the director for
18 potential appointment. If only one candidate is nominated for a
19 position, the director has the discretion to appoint or reject the
20 candidate.))

21 (4) The director may request that any candidate whose name is
22 forwarded to the director for potential appointment ((shall)) submit
23 ((to the director)) a letter stating why he or she wishes to be
24 appointed to the commission. ((The director may select any candidate
25 for the position or may reject all candidates and request a new
26 advisory vote with nominees selected by the commission or, if the
27 commission desires, by the director.))

28 (5) If the director rejects one or more of the candidates nominated
29 under RCW 15.44.033, the director may request that the commission
30 provide additional qualified nominees for consideration. Upon receipt
31 of the nomination or nominations, the director may select a candidate,
32 cause an advisory vote to be held, or reject the nominees. If the
33 commission does not submit additional nominees to the director within
34 thirty days of the director's request, the director shall nominate
35 additional candidates for an advisory vote.

36 (6) The commission may appoint up to three nonvoting members who
37 have expertise in marketing, operations, or other topics relevant to

1 the work of the commission. The term of office for each nonvoting
2 position is one year and may be renewed by the commission.

3 (7) The director shall appoint one person to a dealer position,
4 unless the commission adopts rules providing for additional dealer
5 positions on the commission.

6 **Sec. 4.** RCW 15.44.022 and 2003 c 396 s 28 are each amended to read
7 as follows:

8 (1) To accomplish the transition to ((a commission structure where
9 the director appoints the commission members, the names of the
10 currently elected commission members shall be forwarded to the director
11 for appointment to the commission within thirty days of May 20, 2003.
12 Thereafter, the director shall appoint commission members pursuant to
13 RCW 15.44.021 as the current commission member terms expire)) the newly
14 defined districts and areas as described in RCW 15.44.027, the initial
15 producer appointments are as follows:

16 (a) The current incumbent representing district one must be
17 appointed to the new district four position with an expiration date of
18 June 30, 2015;

19 (b) The current incumbent representing district two must be
20 appointed to the eastern Washington at-large position with an
21 expiration date of June 30, 2015;

22 (c) The current incumbent representing district three must be
23 appointed to the new district one position with an expiration date of
24 June 30, 2013;

25 (d) The current incumbent representing district four must be
26 appointed to the new district three position with an expiration date of
27 June 30, 2013;

28 (e) The current incumbent representing district five must be
29 appointed to the state at-large position with an expiration date of
30 June 30, 2014;

31 (f) The current incumbent representing district six must be
32 appointed to the new western Washington at-large position with an
33 expiration date of June 30, 2014;

34 (g) The current incumbent representing district seven must be
35 appointed to the new district two position with an expiration date of
36 June 30, 2014; and

1 (h) The current incumbent representing dealers must be appointed to
2 the dealer position with an expiration date of June 30, 2013.

3 (2) Thereafter, producer and dealer members are nominated and
4 appointed as provided for under RCW 15.44.021 and 15.44.033.

5 **Sec. 5.** RCW 15.44.027 and 2010 c 8 s 6057 are each amended to read
6 as follows:

7 ~~((The commission shall delete, combine, revise, amend, or modify in~~
8 ~~any manner commission districts and boundaries by regulation as~~
9 ~~required and in accordance with the intent and provisions of this~~
10 ~~section. Commission districts established by statute prior to~~
11 ~~September 8, 1975 shall remain in effect until superseded by such~~
12 ~~regulations.))~~

13 (1) One producer member of the commission must be appointed from
14 each of the following districts or areas:

15 (a) District one, which includes the counties of Whatcom, Skagit,
16 Snohomish, San Juan, Island, and that portion of King county located
17 north of interstate 90;

18 (b) District two, which includes the counties of Clallam,
19 Jefferson, Grays Harbor, Kitsap, Mason, Thurston, Pierce, Lewis,
20 Wahkiakum, Cowlitz, Clark, Skamania, and that portion of King county
21 located south of interstate 90;

22 (c) District three, which includes the counties of Yakima,
23 Klickitat, and Benton;

24 (d) District four, which includes the counties of Kittitas, Grant,
25 Franklin, Walla Walla, Columbia, Garfield, Asotin, Whitman, Adams,
26 Lincoln, Spokane, Douglas, Chelan, Okanogan, Ferry, Stevens, and Pend
27 Oreille;

28 (e) Western Washington at-large, which includes that portion of the
29 state of Washington located west of the crest of the Cascade mountains;

30 (f) Eastern Washington at-large, which includes that portion of the
31 state of Washington located east of the crest of the Cascade mountains;
32 and

33 (g) The state at large, which includes the entire state.

34 (2) The commission may adopt rules to eliminate, combine, revise,
35 amend, or otherwise modify commission districts and areas in accordance
36 with the intent and provisions of this chapter. In the event of

1 redistricting, the procedure for transition of appointments to new
2 districts or areas must be set forth in rule. The commission may adopt
3 rules allowing the appointment of additional dealers to the commission.

4 (3) The boundaries and numbers of the commission districts or areas
5 shall be maintained in a manner that ((assures)) ensures each producer
6 a representation in the commission which is reasonably equal with the
7 representation afforded all other producers by their commission members
8 and maintains reasonable apportionment for each historical production
9 or marketing area. However, the requirement of this section for
10 reasonable equal representation of each producer on the commission does
11 not require an equality of representation when the commission districts
12 east of the crest of the Cascade mountains are compared to the
13 commission districts west of the crest of the Cascade mountains.

14 (4) The commission shall, when requested in accordance with the
15 provisions of the administrative procedure act, chapter 34.05 RCW as
16 enacted or hereafter amended, or on its own initiative, hold hearings
17 to determine if new boundaries for each commission district or area
18 should be established in order to afford each producer a reasonably
19 equal representation in the commission, and if the commission so finds
20 it shall change the boundaries of ((said)) the commission districts or
21 areas to carry out the proper reapportionment of producer
22 representation on the commission((:—PROVIDED, That the requirement of
23 this section for reasonable equal representation of each producer on
24 the commission need not require an equality of representation when the
25 commission districts east of the crest of the Cascade mountains are
26 compared to the commission districts west of the crest of the Cascade
27 mountains:—PROVIDED FURTHER, That the area east of the crest of the
28 Cascade mountains shall comprise not less than two commission
29 districts.

30 The commission may in carrying out this reapportionment directive
31 reduce the number of districts presently provided by prior law,
32 whenever it is in the best interest of the producers and if such change
33 would maintain reasonable apportionment for each historical production
34 or marketing area:—PROVIDED, That each elected commission member whose
35 district may be consolidated with another district shall be allowed to
36 serve out his or her term of office)).

37 (5) A review of boundaries and areas must be conducted by the
38 commission at least every five years and take into consideration the

1 distribution of producers, the number of head, production levels, and
2 other relevant factors as determined by the commission. If the
3 commission fails to carry out its (~~(directive)~~) responsibilities as set
4 forth (~~(herein for equal representation of each producer on the~~
5 ~~commission)~~) in this section, the director (~~(of agriculture)~~) may upon
6 request by ten producers institute a hearing to determine if there is
7 reasonably equal representation for each producer on the commission.
8 If the director (~~(of agriculture)~~) finds that such reasonably equal
9 representation is lacking, he or she then shall realign the district
10 boundaries in a manner which will provide proper representation on the
11 commission for each producer.

12 **Sec. 6.** RCW 15.44.030 and 2008 c 12 s 3 are each amended to read
13 as follows:

14 Each of the producer members of the commission shall:

15 (1) Be a citizen and resident of this state and the district or
16 area which he or she represents; and

17 (2) Be and for the five years last preceding his or her election
18 have been actually engaged as an owner or shareholder in producing
19 dairy products within this state. These qualifications must continue
20 during each member's term of office.

21 The dealer member shall be actively engaged as a dealer in dairy
22 products or employed in a dealer capacity as an officer or employee at
23 management level in a dairy products organization.

24 **Sec. 7.** RCW 15.44.032 and 2008 c 12 s 4 are each amended to read
25 as follows:

26 (1) Except as provided in this section for initial appointments
27 after redistricting or boundary modification, the ((regular)) term of
28 office of each producer member of the commission shall be three years.
29 Commission members shall (~~(be first nominated and elected in 1966 in~~
30 ~~the manner set forth in RCW 15.44.033 and shall take office as soon as~~
31 ~~they are qualified. However, expiration of the term of the respective~~
32 ~~commission members first elected in 1966 shall be as follows:~~

33 ~~(1) District I and II on July 1, 1967;~~

34 ~~(2) District III and IV on July 1, 1968; and~~

35 ~~(3) District V, VI and VII on July 1, 1969.~~

1 ~~The respective terms shall end on July 1st of each third year~~
2 thereafter)) continue to serve their terms until new appointments are
3 made.

4 (2) Any vacancies that occur on the commission shall be filled by
5 appointment by the director from a list containing the names of a
6 candidate or candidates forwarded to the director by the commission.
7 (~~If only one name is forwarded,~~) The director has the discretion to
8 appoint or reject the candidate or candidates and, if the candidate or
9 candidates are rejected, request additional candidates. The appointee
10 shall hold office for the remainder of the term for which he or she is
11 appointed to fill, so that commission memberships shall be on a uniform
12 staggered basis.

13 (~~The term of office of the first dealer appointed by the director~~
14 ~~shall expire July 1, 1977.~~) (3) The term of office of each dealer
15 shall be three years or until such time as a successor is duly
16 appointed. Any vacancy for a dealer shall be forthwith filled by the
17 director. The director, in making any dealer appointments (~~set forth~~
18 ~~herein~~)), may consider lists of nominees supplied by dealers or
19 producers also acting as dealers.

20 **Sec. 8.** RCW 15.44.033 and 2003 c 396 s 26 are each amended to read
21 as follows:

22 (1) Producer members of the commission shall be nominated by
23 producers within the district or area that such producer members
24 represent (~~in the year in which a commission member's term shall~~
25 ~~expire~~)).

26 (2) Nomination for candidates to be appointed to the commission
27 shall be conducted by mail by the director. Such nomination forms
28 shall be mailed by the director to each producer in a district or area
29 where a vacancy is about to occur. Such mailing shall be made on or
30 after April 1st, but not later than April 10th of the year the
31 (~~commission vacancy will occur~~) incumbent's term will expire. The
32 nomination form shall provide for the name of the (~~producer being~~
33 ~~nominated~~) nominee and the names of five other producers nominating
34 such nominee. The producers nominating such nominee shall (~~affix~~
35 ~~their signatures to such~~) sign the form and shall further attest that
36 the (~~said~~) nominee meets the qualifications for a producer member to

1 serve on the commission and that he or she will be willing to serve on
2 the commission if appointed.

3 (2) All nominations as provided for (~~herein~~) in this section
4 shall be returned to the director by April 30th, and the director shall
5 not accept any nomination postmarked later than midnight April 30th,
6 nor place the candidate thereon on the advisory (~~election~~) ballot.

7 (3) Advisory vote ballots for (~~electing~~) appointing nominees to
8 the commission will be mailed by the director to all eligible producers
9 no later than May 15th, in districts or areas where advisory
10 (~~elections~~) votes are to be held and such ballots to be valid shall
11 be returned postmarked no later than May 31st of the year mailed, to
12 the director in Olympia.

13 (4) The director shall determine whether the persons nominated
14 possess the qualifications required by statute for the position.

15 **Sec. 9.** RCW 15.44.035 and 2003 c 396 s 27 are each amended to read
16 as follows:

17 (1) The commission shall prior to each advisory (~~election~~) vote,
18 in sufficient time to satisfy the requirements of RCW 15.44.033,
19 furnish the director with a list of all producers within the district
20 or area for which the advisory (~~election~~) vote is being held. The
21 commission shall require each dealer and shipper in addition to the
22 information required under RCW 15.44.110 to furnish the commission with
23 a list of names of producers whose milk they handle.

24 (2) Any producer may on his or her own motion file his or her name
25 with the commission for the purpose of receiving notice of the advisory
26 (~~election~~) vote.

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

29 (4) For all purposes of giving notice, holding referenda, and
30 conducting advisory votes for nominees to the commission, the
31 applicable list of producers corrected up to the day preceding the date
32 the list is certified and mailed to the director is deemed to be the
33 list of all producers or handlers, as applicable, entitled to notice or
34 to vote. The list shall be corrected and brought up-to-date in
35 accordance with evidence and information provided to the commission.

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