SUBSTITUTE HOUSE BILL 2412

State of Washington 64th Legislature 2016 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Chandler, Buys, and Muri; by request of Washington Apple Commission)

READ FIRST TIME 01/28/16.

- 1 AN ACT Relating to the apple commission; amending RCW 15.24.010,
- 2 15.24.020, 15.24.030, 15.24.035, 15.24.073, 15.24.080, 15.24.090,
- 3 15.24.100, 15.24.110, 15.24.120, and 15.24.900; and repealing RCW
- 4 15.24.033, 15.24.040, 15.24.060, 15.24.086, and 15.24.170.
- 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 6 **Sec. 1.** RCW 15.24.010 and 2002 c 313 s 115 are each amended to read as follows:
- 8 As used in this chapter:
- 9 (1) "Commission" means the Washington apple commission;
- 10 (2) "Ship" means to load apples into a conveyance for transport, 11 except apples being moved from the orchard where grown to a packing 12 house or warehouse within the immediate area of production;
- 13 (3) "Handler" means any person who ships or initiates a shipping operation, whether for himself, herself, or for another;
- 15 (4) "Dealer" means any person who handles, ships, buys, or sells 16 apples, or who acts as sales or purchasing agent, broker, or factor 17 of apples;
- 18 (5) "Processor" and "processing plant" means every person to whom 19 and every place to which apples are delivered for drying, 20 dehydrating, canning, pressing, powdering, extracting, cooking, or

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1 for use in producing a product or manufacturing a manufactured 2 article;

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- (6) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article. However, "processing apples" does not include fresh apples sliced or cut for raw consumption;
- 8 (7) "Fresh apples" means all apples other than processing apples;
- 9 (8) "Director" means the director of the department of 10 agriculture or his or her duly authorized representative;
- 11 (9) "Grower district No. 1" includes the counties of Chelan, 12 Okanogan, and Douglas;
- 13 (10) "Grower district No. 2" includes the counties of Kittitas, 14 Yakima, Benton, and Franklin;
- 15 (11) "Grower district No. 3" includes all counties in the state 16 not included in the first and second districts;
- 17 (12) "Dealer district No. 1" includes the area of the state north 18 of Interstate 90;
- 19 (13) "Dealer district No. 2" includes the area of the state south 20 of Interstate 90; ((and))
- 21 (14) "Executive officer" includes, but is not limited to, the 22 principal management executive, sales manager, general manager, or 23 other executive employee of similar responsibility and authority;
- 24 (15) "Grower" means a person engaged in the business of producing
 25 apples for market in commercial quantities, whether as an individual,
 26 corporation, firm, limited liability company, trust, association,
 27 partnership, society, or any other organization of individuals; and
- 28 (16) "Crop year" means the year in which apples are harvested and 29 is designated for those apples based on the date of harvest 30 regardless of when they are subsequently packed or shipped.
- 31 **Sec. 2.** RCW 15.24.020 and 2004 c 178 s 2 are each amended to 32 read as follows:
- There is hereby created a Washington apple commission to be thus known and designated. The commission shall be composed of nine ((practical)) apple ((producers)) growers and four ((practical)) apple dealers. In addition, the director shall be a full voting member of the commission and may in his or her place appoint any other employee of the department of agriculture as a designee to

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attend commission meetings and otherwise represent the director and exercise the director's vote.

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3 The nine ((producer)) grower members shall be citizens and residents of this state, over the age of twenty-five years, each of 4 5 whom, either individually or as an executive officer 6 corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a 7 period of <u>at least</u> five years, currently operates a commercial 8 producing orchard in the district represented, and has during that 9 period derived a substantial portion of his or her income therefrom. 10 11 The four dealer members shall be persons who, either individually or 12 executive officers of a corporation, firm, partnership, as association, or cooperative organization, are and have been actively 13 engaged as dealers in apples within the state of Washington for a 14 period of at least five years, and are citizens and residents of this 15 16 state, and are engaged as apple dealers in the district represented. 17 The qualifications of members of the commission as herein set forth must continue during their term of office. A person who meets the 18 19 qualifications of both a ((producer)) grower and a dealer as set forth in this section may serve as either a ((producer)) grower 20 21 member or a dealer member.

22 **Sec. 3.** RCW 15.24.030 and 2004 c 178 s 3 are each amended to 23 read as follows:

Thirteen persons, not including the director or the director's representative, with the qualifications stated in RCW 15.24.020 shall be members of the commission. Nine of the members shall be ((producer)) grower members, and four shall be dealer members. The number of ((producer)) grower members to be appointed from each grower district shall be determined in accordance with the relative acreages of planted commercial apple orchards within the various districts ((as of July 1, 2003)), according to the most recent census of acreages published by the United States department of agriculture, agricultural statistics service. The number of ((producer)) grower members to be appointed from each of the grower districts shall be subject to readjustment every ten years thereafter in accordance with the then most recent census of acreages of planted commercial apple orchards published by the United States department of agriculture, agricultural statistics service. In the event the information from the United States department of agriculture's agricultural statistics

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1 service is not published with respect to the specifically defined districts, the commission shall adopt rules to establish equitable 2 apportionment based on the available information. However, at all 3 times at least two ((producer)) grower members shall be from district 4 1, one of which shall be from Okanogan county; district 2 shall never 5 have fewer than two ((producer)) grower members; and district 3 shall 6 7 never have fewer than one ((producer)) grower member. The commission shall adopt rules to effect the efficient transition of reapportioned 8 9 positions.

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within the district.

The regular term of office of the members of the commission shall be three years from March 1st following their appointment by the director and until their successors are appointed. The commission shall hold its annual meeting during the month of March each year and shall hold such other meetings during the year as it shall determine. The first commission meeting that takes place after June 10, 2004, shall be held in Wenatchee, and subsequent commission meetings shall alternate between Yakima and Wenatchee.

- 18 **Sec. 4.** RCW 15.24.035 and 2008 c 11 s 1 are each amended to read 19 as follows:
- 20 (1) The director shall appoint the members of the commission.
 - (2) ((Candidates for positions on the commission shall be nominated to the director in accordance with subsection (3) of this section.)) Except as provided in RCW 15.24.050, before the expiration of a commission member's term, the commission shall call a meeting of apple growers and dealers for the purpose of nominating candidates whose names will be forwarded to the director for consideration for appointment as a member of the commission. The meetings may be held each year, as far as practicable, at the same time and place as an annual meeting of a grower or dealer organization that represents a majority of the state's apple growers or dealers, but not while the same is in actual session. Public notice of such meetings must be given by the commission in such manner as it may determine: PROVIDED, That nonreceipt of the notice by any interested person does not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the respective meetings. Nominations may also be made within five days after any such meeting by written petition filed in the office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing

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(3) ((Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term,)) The commission shall ((cause)) hold an advisory vote ((to be held for the director-appointed positions)) in the event that more than two candidates are nominated for a position. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for consideration. In the event that only one candidate is nominated, the name must be forwarded to the director for consideration without an advisory vote.

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- Advisory ballots shall be mailed to all ((affected producers)) growers for ((producer)) grower positions and to affected dealers for dealer positions ((and shall be returned to the commission not less than thirty days prior to the commencement of the term)). The advisory ballot shall be conducted in a manner so that it is a secret ballot. ((The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event only two candidates are nominated for a position, an advisory vote need not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a Nominees to be forwarded to the director for position,)) consideration for appointment to dealer positions on the commission shall be selected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. Nominees to be forwarded to the director for consideration for appointment to grower positions on the commission shall be selected by a majority of the votes cast by the apple growers in the respective districts. Each grower person engaged in the business of producing apples for market in commercial quantities within the district is entitled to one vote. An individual commercial orchard operator, if otherwise qualified, is entitled to vote, even though he or she is also a member of a partnership or corporation, which also is entitled to vote.
- 34 <u>(5) The director has the discretion to appoint or reject ((the))</u>
 35 <u>any</u> candidate.
 - ((4))) (6) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select any candidate for the position or may reject all

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- candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director.
- **Sec. 5.** RCW 15.24.073 and 2002 c 313 s 125 are each amended to 4 read as follows:
- All rule-making proceedings conducted under this chapter must be in accordance with chapter 34.05 RCW except that rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, 43.135.055, and the provisions of chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum.
- **Sec. 6.** RCW 15.24.080 and 2002 c 313 s 120 are each amended to 12 read as follows:

- In order to benefit the people of this state, the state's economy and its general tax revenues, the commission shall provide for and conduct a comprehensive and extensive research, advertising, and educational campaign as continuous as the crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of ((producers)) growers, conditions of the markets, and extent to which public convenience and necessity require research and advertising to be conducted.
- **Sec. 7.** RCW 15.24.090 and 2004 c 178 s 10 are each amended to 22 read as follows:
- (1) There is hereby levied annually upon all fresh apples grown in this state, and all apples packed as Washington apples, including fresh sliced, an assessment of eight and seventy-five one-hundredths cents per one hundred pounds of apples, based on net shipping weight, or reasonable equivalent net product assessment measurement as determined by the commission. All moneys collected under this subsection must be expended to effectuate the purpose and objects of this chapter. The assessment rates established in this subsection may be increased or decreased pursuant to the procedure in subsection (2) of this section.
 - (2) If ((it appears from investigation by the director and)) the commission determines based on information available to it that the revenue from the assessment levied ((on fresh apples)) under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission

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shall ((adopt a resolution)) commence rule making a proposal setting 1 forth the ((necessities)) needs of the industry, the extent and 2 probable cost of ((the required research or other expenditures, the 3 extent of public convenience, interest, and necessity, and probable)) 4 commission activities identified as necessary to address the needs of 5 6 the industry together with a brief statement justifying each activity, the proposed new assessment rate, and the expected revenue 7 from the <u>proposed</u> assessment ((levied)). A <u>different rate may be</u> 8 9 proposed for any specific variety or for fresh apples sliced or cut 10 for raw consumption.

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(3) Upon receiving the director's approval of the resolution and with the oversight of the director, ((and subject to the approval by vote of at least two-thirds for increases, or a majority for decreases, of the producers voting; and approval of voting producers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election, the commission shall thereupon decrease or increase the assessment to a sum determined by the commission to be necessary for those purposes. However, if a different rate is determined for any specific variety or for fresh apples sliced or cut for raw consumption, that different rate must be applied to that variety or those sliced or cut apples. A decrease or an increase becomes effective sixty days after the resolution is adopted or on any other date provided for in the resolution, but shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by at least two-thirds for increases, or a majority for decreases, of the growers voting on it and also be approved by voting growers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election. After the mail ballot, if favorable to the increase or decrease, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase or decrease)) the commission may conduct a referendum to determine whether growers assent to the proposed new assessment rate, or may refer the matter to the director to conduct the referendum on behalf of the commission. An increase in the assessment rate is approved if two-thirds of growers vote in favor and the growers voting in favor represent two-thirds of the apples grown in the two prior crop years, based on net shipping weight. A decrease in the assessment rate is approved if a majority

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- 1 of growers vote in favor and the growers voting in favor represent
- 2 two-thirds of the apples grown in the two prior crop years, based on
- 3 the net shipping weight. If approved, the new rate must be adopted in
- 4 rule in accordance with chapter 34.05 RCW.

- **Sec. 8.** RCW 15.24.100 and 2004 c 178 s 11 are each amended to 6 read as follows:
 - (1) ((Subject to subsection (2) of this section, there is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, including fresh sliced, an assessment of eight and seventy-five one-hundredths cents per one hundred pounds of apples, based on net shipping weight, or reasonable equivalent net product assessment measurement as determined by the commission, plus such annual decreases or increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter.
 - (2) No sooner than five years from June 10, 2004,)) \underline{A} petition may be filed with the commission to reduce the assessment authorized in this section to zero. To be valid, the petition must be signed by at least eight percent of all apple growers eligible to vote in commission referendum elections. The petition shall contain the name of a person designated to represent the petitioners.
 - $((\frac{1}{2}))$ (2) Upon receipt of a valid petition, the commission shall prepare a document discussing the substance of the petition. A statement in favor of the petition shall be written by the proponents of the petition. A statement opposing the petition may be written by the commission or an opponent. The document and a notice of public hearing shall be sent to apple growers eligible to vote in commission referendum elections at least twenty days prior to the scheduled public hearings. The commission shall hold public hearings in Yakima and Wenatchee on the petition.
 - $((\buildrel{b}))$ (3) Following the public hearings, the question of whether to reduce the assessment authorized in this section to zero shall be referred to a referendum mail ballot. The commission shall certify to the director a list of apple growers eligible to vote in commission referendum elections. The referendum shall be conducted and supervised by the director using the certified list. Inadvertent failure to notify ((an affected)) a grower does not invalidate a referendum.

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 $((\frac{\langle e \rangle}{}))$ (4) The referendum will be approved if a simple majority of apple growers voting in the referendum election vote in favor of the elimination of the assessment. The director will certify the results of the vote.

 $((\frac{d}{d}))$ (5) The referendum vote shall be binding and may not be overturned by action of the commission or director. If the referendum is approved, the commission shall immediately commence activities to wind down its operations. However, the elimination of the assessment shall not be effective until six months from the date the referendum result is certified by the director. If the referendum fails, neither the commission nor the director will take further action on the petition.

 $((\frac{(e)}{(e)}))$ (6) The commission is responsible for all its own costs and all the director's costs associated with the hearing, notice, and referendum process. A subsequent petition may not be filed any sooner than five years following the certification of the results of any previously held referendum conducted under this $((\frac{e}{e}))$) section.

Sec. 9. RCW 15.24.110 and 2004 c 178 s 12 are each amended to 19 read as follows:

The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, ((prior to)) at the time of shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule prescribe the method of collection((, and for that purpose may require stamps to be known as "Washington apple stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Rule-making procedures conducted under this section are exempt from the provisions of RCW 43.135.055 when adoption of the rule or rules is determined by a referendum vote of the persons taxed under this chapter)) of the assessment.

The commission may also collect assessments imposed under RCW 15.26.120, and in that event, the commission shall establish and be reimbursed by the Washington tree fruit research commission an amount representing a reasonable approximation of the actual costs to the commission of such collection.

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Sec. 10. RCW 15.24.120 and 2010 c 8 s 6021 are each amended to 2 read as follows:

Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled, shipped, or processed by him or her. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two prior crop years, and be subject to inspection at any time upon demand of the commission or its agents.

- **Sec. 11.** RCW 15.24.900 and 2011 c 103 s 27 are each amended to 11 read as follows:
 - (1) This chapter is passed:

- (a) In the exercise of the police power of the state to assure, through this chapter, and other chapters, that the apple industry is highly regulated to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state as a vital and integral part of its economy for the benefit of all its citizens;
- (b) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;
- 23 (c) Because it is necessary and expedient to enhance the 24 reputation of Washington apples in domestic and foreign markets;
 - (d) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;
 - (e) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;
 - (f) Because the stabilizing and promotion of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure and increase the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;
- 38 (g) To disseminate information giving the public full knowledge 39 of the manner of production, the cost and expense thereof, the care

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- taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the ((producer)) grower therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the ((producer)) grower will be reduced to the minimum absolutely necessary; and
 - (h) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put.

- (2) The history, economy, culture, and future of Washington state's agricultural industry involves the apple industry. In order to develop and promote apples and apple products as part of an existing comprehensive scheme to regulate those products, the legislature declares:
- (a) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its apple and apple products be properly promoted by establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standards of and for apples and apple products; and by working to stabilize the apple industry and by increasing consumption of apples and apple products within the state, nation, and internationally;
- (b) That apple ((producers)) growers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural ((producer's)) grower's ability to compete in local, domestic, and foreign markets;
- (c) That it is in the overriding public interest that support for the apple industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that apples and apple products be promoted individually, as well as part of a comprehensive promotion of the agricultural industry to:
- 36 (i) Enhance the reputation and image of Washington state's 37 agricultural industry;
- 38 (ii) Increase the sale and use of apples and apple products in local, domestic, and foreign markets;

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- (iii) Protect the public and consumers by correcting any false or misleading information and by educating the public in reference to the quality, care, and methods used in the production of apples and apple products, and in reference to the various sizes, grades, and varieties of apples and the uses to which each should be put;
- 6 (iv) Increase the knowledge of the health-giving qualities and 7 dietetic value of apple products; and
- 8 (v) Support and engage in programs or activities that benefit the 9 production, handling, processing, marketing, and uses of apples and 10 apple products;
- 11 (d) That the apple industry is a highly regulated industry and 12 that this chapter and the rules adopted under it are only one aspect 13 of the regulation of the industry. Other regulations and restraints 14 applicable to the apple industry include:
 - (i) Washington agriculture general provisions, chapter 15.04 RCW;
- 16 (ii) Pests and diseases, chapter 15.08 RCW;

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- (iii) Standards of grades and packs, chapter 15.17 RCW;
- (iv) Tree fruit research, chapter 15.26 RCW;
- 19 (v) Controlled atmosphere storage, chapter 15.30 RCW;
- 20 (vi) Higher education in agriculture, chapter 28B.30 RCW;
- 21 (vii) Department of agriculture, chapter 43.23 RCW;
- 22 (viii) Fertilizers, minerals, and limes under chapter 15.54 RCW;
- 23 (ix) Organic products act under chapter 15.86 RCW;
- 24 (x) Intrastate commerce in food, drugs, and cosmetics under 25 chapter 69.04 RCW and rules;
- 26 (xi) Horticultural plants, Christmas trees, and facilities— 27 Inspection and licensing under chapter 15.13 RCW;
- 28 (xii) Planting stock under chapter 15.14 RCW;
- 29 (xiii) Washington pesticide control act under chapter 15.58 RCW;
- 30 (xiv) Farm marketing under chapter 15.64 RCW;
- 31 (xv) Insect pests and plant diseases under chapter 17.24 RCW;
- 32 (xvi) Weights and measures under chapter 19.94 RCW;
- 33 (xvii) Agricultural products—Commission merchants, dealers, 34 brokers, buyers, and agents under chapter 20.01 RCW; and
- 35 (xviii) The federal insecticide, fungicide, and rodenticide act 36 under 7 U.S.C. Sec. 136; and
- 37 (e) That this chapter is in the exercise of the police powers of 38 this state for the purposes of protecting the health, peace, safety, 39 and general welfare of the people of this state.

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- NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:
- 3 (1) RCW 15.24.033 (Members—Transition to appointed commission— 4 Appointments by director) and 2004 c 178 s 4;
- 5 (2) RCW 15.24.040 (Members—Nominations to the advisory ballot) 6 and 2008 c 11 s 2, 2004 c 178 s 6, 2002 c 313 s 117, 1989 c 354 s 56,
- 7 1967 c 240 s 25, 1963 c 145 s 4, & 1961 c 11 s 15.24.040;
- 8 (3) RCW 15.24.060 (Commission records as evidence) and 1961 c 11 9 s 15.24.060;
- 10 (4) RCW 15.24.086 (Promotional printing contracts—Contractual conditions of employment) and 2015 c 225 s 8, 1994 c 164 s 1, 1973 lst ex.s. c 154 s 20, & 1961 c 11 s 15.24.086; and
- 13 (5) RCW 15.24.170 (Rules and regulations—Filing—Publication) and 2002 c 313 s 127, 1975 1st ex.s. c 7 s 37, & 1961 c 11 s 15.24.170.

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