
**Agriculture & Ecology
Committee**

HB 2429

Brief Description: Providing for the regulation of commodity commissions.

Sponsors: Representatives Linville, Schoesler and Grant.

Brief Summary of Bill

- Expands the reasons a commodity commission may be created under the 1955 Agricultural Enabling Act, expands the authorities of such of commission; and cites other laws that provide comprehensive regulation of the commodities governed by such a commission.
- No longer requires the Director of Agriculture to be a member of each commission created under the 1955 Act and alters requirements regarding commission members that may be appointed by the Director and regarding vacancies in those positions.
- Allows commodity commissions to provide an alternative program regarding the accumulation of leave by state officials and employees and compensation for unused leave and specifies the content of such a program.
- Permits investment of commission funds in savings or time deposits of out-of-state financial institutions.

Hearing Date: 2/1/02

Staff: Kenneth Hirst (786-7105).

Background:

United States et al. v. United Foods, Inc. (121 S Ct. 2334 (2001)) was decided by the U. S. Supreme Court in June 2001. In its decision, the court declared a mandatory assessment on mushrooms for a federal promotional program to be an unconstitutional infringement on free speech. Although the Supreme Court upheld a commodity assessment in *Glickman v. Wileman Brothers & Elliott, Inc.* in 1997, in its 2001 decision, the Court noted important differences between this case and the *Glickman* case. For example, the Court stated:

"The program sustained in *Glickman* differs from the one under review in a most fundamental respect. In *Glickman*, the mandated assessments for speech were ancillary to a more comprehensive program restricting marketing autonomy. Here, for all practical purposes, the advertising itself, far from being ancillary, is the principal objective of the regulatory scheme." (121 S Ct. 2334, et. page 2338).

Some agricultural commodity commissions have been created directly by statute. Examples these type of commodity commissions are the Fruit Commission, Tree Fruit Research Commission, Apple Advertising Commission, Beef Commission, and Dairy Products Commission. (Chapters 15.28, 15.24, 15.26, 15.44, and 16.67 RCW.) The state's Agricultural Enabling Acts of 1955 and 1961 provide procedures under which the producers of agricultural commodities may prepare marketing agreements and orders to create, by referenda, agricultural commodity boards and commissions for the commodities without further statutory authority. (Chapters 15.65 and 15.66 RCW.) The first commission created in this way was the Wheat Commission, which was established under the 1955 Enabling Act. (Chapter 16-528 WAC.)

State laws limit the accumulation of leave in excess of 30 days and limit the reimbursement for such leave. These laws govern: the computation, accrual and transfer of vacation leave; limitations on the accrual of unused leave, statements of necessity regarding unused leave over these limitations, and a statutory alternative to the accrual limitation and statement requirement; payment for unused leave upon the end of employment; and a prohibition against using payment for leave accumulated under the alternative system from being used in the computation of retirement benefits. (RCW 43.01.040, .041, and .044.)

Summary of Bill:

Commodity Commission: The Agricultural Enabling Act of 1955 is amended, which affects commodity commissions created under the 1955 Act. As background, it is stated that farmers and ranchers operate within a regulatory environment that imposes burdens, including those that impair the producer's ability to compete in local domestic, and foreign markets and it is in the overriding public interest that each agricultural commodity be promoted individually and as part of a comprehensive industry. Expressly added as a reason such a commodity commission is created is developing and promoting this state's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities. (Section 1.) The 1955 Act and its rules are only one aspect of the comprehensively regulated agricultural industry. 25 chapters of state law and a section of the federal pesticide law are listed as being other laws applicable to agricultural commodities. (Section 4.) In addition to these, three groups of federal rules are cited as regulating the potato industry; a federal law regarding agricultural marketing and the state's Clean Air Act are cited as regulating the wheat and barley industry; two chapters of federal law, a section of a federal marketing law, and Fryer Commission labeling standards are cited as regulating the poultry industry. The Director of Agriculture is authorized to implement and administer the 1955 Act through the establishment of commodity commissions. (Section 1(5).)

The research studies that may be provided for under a marketing order may expressly include studies to find more efficient irrigation or transportation of commodities. (Sections 3 and 11). Commissions created under the 1955 Act may also:

- engage in cooperative advertising and promotion efforts with individual manufacturers,

processors, packers and shippers, cooperatives, and producers of the affected commodity grown in the state, if the commission publicly offers these types of cooperative programs to all such manufacturers, processors, packers and shippers, and producers of the affected state commodity; and

- maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the marketing order and data on the value of each producer's production for a minimum three-year period and a list of affected handlers with data regarding the commodity handled. (Section 11.)

A marketing order may permit the Director to appoint a majority of the members of a commission, with certain statutorily provided procedures and guidance. Two options are established for providing those procedures and guidance. However, not less than one-third of commission members must be elected by affected producers. (Sections 6 through 8.)

The Director of Agriculture is an ex officio member of each commission created under the 1955 Act only if the commission's marketing order does not provide otherwise.

Requirements for filling vacancies in appointed positions on a commission are provided. If a vacancy in a Director appointed position, the remaining commission members must recommend a qualified person for the appointment and the Director must appoint the person recommended he or she fails to meet the qualifications of commission members listed the marketing order and the 1955 Act. (Sections 9 and 10.) The "persons" defined by the Act include agencies of government; not more than one board member may be part of the same "person." (Sections 1(11) and 6.)

The funds of commissions may also be invested in savings or time deposits of financial institutions out-of-state, rather than only those in-state. (Section 13.)

A number of terms used in the 1955 Act are clarified. For example:; mailing or sending required notices includes sending them electronically; handlers do not include common carriers; lists of affected entities may include, if requested by the Director, the amount by unit of the affected commodity produced or handled during a designated period; and a production period is either a minimum three-year period or as specified in a marketing order; . (Section 1(17), (18) - (21) and (26).)

Leave in Excess of 30 days.

A commodity commission under the 1955 Act is exempt from the limitations of state laws regarding the accumulation by state employees and officers of leave in excess of thirty days. The exemption applies if the commission establishes an incentive program for commission employees that exceeds the requirements these laws. The incentive program must be provided as follows:

1. In January of the year following any year in which a minimum of thirty days of annual leave is accrued, and each successive January, an eligible employee may exercise an option to receive remuneration for unused annual leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each two full days of annual leave in excess of thirty days. Annual leave for which compensation has been received must be deducted from accrued annual leave at the rate of two days for every one day of monetary compensation. This remuneration may not be included in the

computation of retirement benefits and may not result in any increase in a retirement allowance under any public retirement system in this state.

2. Upon separation from commission employment (including through death), an eligible employee or the employee's estate must receive remuneration of annual leave at a rate equal to one day's current monetary compensation of the employee for each day of accrued annual leave up to a maximum of thirty days.

The commission may adopt rules under its marketing order to carry out this program. (Section 15.)

Appropriation: None.

Fiscal Note: Requested January 29, 2002 .

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