
SENATE BILL 6639

State of Washington 57th Legislature

2002 Regular Session

By Senator Rasmussen; by request of Department of Agriculture

Read first time 01/23/2002. Referred to Committee on Agriculture & International Trade.

1 AN ACT Relating to regulating commodity boards and commissions;
2 amending RCW 15.65.020, 15.65.040, 15.65.050, 15.65.060, 15.65.070,
3 15.65.090, 15.65.120, 15.65.170, 15.65.180, 15.65.200, 15.65.220,
4 15.65.230, 15.65.235, 15.65.240, 15.65.250, 15.65.260, 15.65.270,
5 15.65.280, 15.65.375, 15.65.380, 15.65.430, 15.65.450, 15.65.570,
6 15.66.010, 15.66.030, 15.66.050, 15.66.060, 15.66.070, 15.66.090,
7 15.66.110, 15.66.120, 15.66.130, 15.66.140, 15.66.180, 15.66.185,
8 15.66.245, 15.66.260, 42.17.31907, 16.67.030, 16.67.070, 16.67.090,
9 16.67.120, 16.67.122, 15.44.010, 15.44.020, 15.44.035, 15.44.038,
10 15.44.060, 15.44.070, 15.44.080, 15.44.085, 15.44.110, 15.44.140,
11 15.44.150, 15.28.010, 15.28.020, 15.28.110, 15.28.130, 15.28.250, and
12 15.88.050; adding new sections to chapter 15.65 RCW; adding new
13 sections to chapter 15.66 RCW; adding new sections to chapter 15.26
14 RCW; adding new sections to chapter 15.28 RCW; adding new sections to
15 chapter 15.44 RCW; adding new sections to chapter 15.88 RCW; adding new
16 sections to chapter 16.67 RCW; adding a new section to chapter 15.24
17 RCW; adding new sections to chapter 43.23 RCW; repealing RCW 15.65.030,
18 15.65.080, 15.65.460, 15.65.405, 15.66.020, 16.67.020, 15.44.037,
19 15.44.900, and 15.28.900; prescribing penalties; and providing an
20 effective date.

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

2 **Sec. 1.** RCW 15.65.020 and 1993 c 80 s 2 are each amended to read
3 as follows:

4 The following terms are hereby defined:

5 (1) "Director" means the director of agriculture of the state of
6 Washington or his or her duly appointed representative. The phrase
7 "director or his or her designee" means the director unless, in the
8 provisions of any marketing agreement or order, he or she has
9 designated an administrator, board, or other designee to act (~~for~~
10 ~~him~~) in the matter designated, in which case "director or his or her
11 designee" means for such order or agreement the administrator, board,
12 or other person(s) so designated and not the director.

13 (2) "Department" means the department of agriculture of the state
14 of Washington.

15 (3) "Marketing order" means an order (~~issued~~) adopted by the
16 director (~~pursuant to~~) under this chapter that establishes a
17 commodity commission for an agricultural commodity or agricultural
18 commodities with like or common qualities or producers.

19 (4) "Marketing agreement" means an agreement entered into and
20 issued by the director pursuant to this chapter.

21 (5) "Agricultural commodity" means any of the following commodities
22 or products: Llamas, alpacas, or any other animal or any distinctive
23 type of agricultural, horticultural, viticultural, floricultural,
24 vegetable, or animal product, including, but not limited to, products
25 qualifying as organic food products under chapter 15.86 RCW and private
26 sector cultured aquatic products as defined in RCW 15.85.020 and other
27 fish and fish products, either in its natural or processed state,
28 including beehives containing bees and honey and Christmas trees but
29 not including timber or timber products. The director is hereby
30 authorized to determine (on the basis of common usage and practice)
31 what kinds, types or sub-types should be classed together as an
32 agricultural commodity for the purposes of this chapter.

33 (6) "Production area" and "marketing area" means any area defined
34 as such in any marketing order or agreement in accordance with RCW
35 15.65.350. "Affected area" means the marketing or production area so
36 defined in such order, agreement or proposal.

37 (7) "Unit" of an agricultural commodity means a unit of volume,
38 weight, quantity, or other measure in which such commodity is commonly

1 measured. The director shall designate in each marketing order and
2 agreement the unit to be used therein.

3 (8) "Affected unit" means in the case of marketing agreements and
4 orders drawn on the basis of a production area, any unit of the
5 commodity specified in or covered by such agreement or order which is
6 produced in such area and sold or marketed or delivered for sale or
7 marketing; and "affected unit" means, in the case of marketing
8 agreements and orders drawn on the basis of marketing area, any unit of
9 the commodity specified in or covered by such agreement or order which
10 is stored in frozen condition or sold or marketed or delivered for sale
11 or marketing within such marketing area: PROVIDED, That in the case of
12 marketing agreements "affected unit" shall include only those units
13 which are produced by producers or handled by handlers who have
14 assented to such agreement.

15 (9) "Affected commodity" means that part or portion of any
16 agricultural commodity which is covered by or forms the subject matter
17 of any marketing agreement or order or proposal, and includes all
18 affected units thereof as herein defined and no others.

19 (10) "Producer" means any person engaged in the business of
20 producing any agricultural commodity for market in commercial
21 quantities. "Affected producer" means any producer (~~of an affected~~
22 ~~commodity~~) who is subject to a marketing order or agreement. "To
23 produce" means to act as a producer. For the purposes of RCW 15.65.140
24 and 15.65.160 as now or hereafter amended "producer" shall include
25 bailees who contract to produce or grow any agricultural product on
26 behalf of a bailor who retains title to the seed and its resulting
27 agricultural product or the agricultural product delivered for further
28 production or increase.

29 (11) "Handler" means any person who acts, either as principal,
30 agent or otherwise, in processing, selling, marketing or distributing
31 an agricultural commodity or storage of a frozen agricultural commodity
32 which was not produced by him or her. "Handler" does not mean a common
33 carrier used to transport an agricultural commodity. "Affected
34 handler" means any handler of an affected commodity. "To handle" means
35 to act as a handler.

36 (12) "Producer-handler" means any person who acts both as a
37 producer and as a handler with respect to any agricultural commodity.
38 A producer-handler shall be deemed to be a producer with respect to the
39 agricultural commodities which he or she produces, and a handler with

1 respect to the agricultural commodities which he or she handles,
2 including those produced by himself or herself.

3 (13) "Cooperative association" means any incorporated or
4 unincorporated association of producers which conforms to the
5 qualifications set out in the act of congress of the United States of
6 February 18, 1922 as amended, known as the "Capper-Volstead Act" and
7 which is engaged in making collective sales or in marketing any
8 agricultural commodity or product thereof or in rendering service for
9 or advancing the interests of the producers of such commodity on a
10 nonprofit cooperative basis.

11 (14) "Member of a cooperative association" means any producer who
12 markets his or her product through such cooperative association and who
13 is a voting stockholder of or has a vote in the control of or is a
14 party to a marketing agreement with such cooperative association with
15 respect to such product.

16 (15) "Producer marketing" or "marketed by producers" means any or
17 all operations performed by any producer or cooperative association of
18 producers in preparing for market and marketing, and shall include:
19 (a) selling any agricultural commodity produced by such producer(s) to
20 any handler; (b) delivering any such commodity or otherwise disposing
21 of it for commercial purposes to or through any handler.

22 (16) "Commercial quantities" as applied to producers and/or
23 production means such quantities per year (or other period of time) of
24 an agricultural commodity as the director finds are not less than the
25 minimum which a prudent man engaged in agricultural production would
26 produce for the purpose of making such quantity of such commodity a
27 substantial contribution to the economic operation of the farm on which
28 such commodity is produced. "Commercial quantities" as applied to
29 handlers and/or handling means such quantities per year (or other
30 period of time) of an agricultural commodity or product thereof as the
31 director finds are not less than the minimum which a prudent man
32 engaged in such handling would handle for the purpose of making such
33 quantity a substantial contribution to the handling operation in which
34 such commodity or product thereof is so handled. In either case the
35 director may in his or her discretion: (a) Determine that substantial
36 quantity is any amount above zero; and (b) apply the quantity so
37 determined on a uniform rule applicable alike to all persons which he
38 or she finds to be similarly situated.

1 (17) "Commodity board" means any board established pursuant to RCW
2 15.65.220. "Board" means any such commodity board unless a different
3 board is expressly specified.

4 (18) "Sell" includes offer for sale, expose for sale, have in
5 possession for sale, exchange, barter or trade.

6 (19) "Section" means a section of this chapter unless some other
7 statute is specifically mentioned. The present includes the past and
8 future tenses, and the past or future the present. The masculine
9 gender includes the feminine and neuter. The singular number includes
10 the plural and the plural includes the singular.

11 (20) "Represented in a referendum" means that a written document
12 evidencing approval or assent or disapproval or dissent is duly and
13 timely filed with or mailed to the director by or on behalf of an
14 affected producer and/or a volume of production of an affected
15 commodity in a form which the director finds meets the requirements of
16 this chapter. "Referendum" means a vote by the affected parties or
17 affected producers which is conducted by secret ballot.

18 (21) "Person" (~~as used in this chapter shall mean any person,~~
19 ~~firm, association or corporation~~) means any individual, firm,
20 corporation, limited liability company, trust, association,
21 partnership, society, or any other organization of individuals, or any
22 unit or agency of local, state, or federal government.

23 (22) "Affected parties" means any producer, affected producer,
24 handler, or commodity commission board member.

25 (23) "Assessment" means the monetary amount established in a
26 marketing order or agreement that is to be paid by each affected
27 producer to a commission in accordance with the schedule established in
28 the marketing order or agreement.

29 (24) "List of affected parties" means a list containing the names
30 and mailing addresses of affected parties. This list shall contain the
31 names and addresses of all affected parties and, if requested by the
32 director, the amount, by unit, of the affected commodity produced
33 during a designated period under this chapter.

34 (25) "List of affected producers" means a list containing the names
35 and mailing addresses of affected producers. This list shall contain
36 the names and addresses of all affected producers and, if requested by
37 the director, the amount, by unit, of the affected commodity produced
38 during a designated period under this chapter.

1 (26) "List of affected handlers" means a list containing the names
2 and addresses of affected handlers. This list shall contain the names
3 and addresses of all affected handlers and, if requested by the
4 director, the amount, by unit, of the affected commodity handled during
5 a designated period under this chapter.

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

11 (28) "Percent by numbers" means the percent of those persons on the
12 list of affected parties or affected producers.

13 (29) "Rule-making proceedings" means the rule-making provisions as
14 outlined in chapter 34.05 RCW.

15 (30) "Vacancy" means that a board member leaves or is removed from
16 a board position prior to the end of a term, or a nomination process
17 for the beginning of a term concludes with no candidates for a
18 position.

19 (31) "Volume of production" means the percent of the average volume
20 of production of the affected commodity of those on the list of
21 affected parties or affected producers for a production period. For
22 the purposes of this chapter, a production period is a minimum three-
23 year period or as specified in the marketing order or agreement.

24 NEW SECTION. Sec. 2. A new section is added to chapter 15.65 RCW
25 to read as follows:

26 The history, economy, culture, and the future of Washington state
27 to a large degree all involve agriculture. In order to develop and
28 promote Washington's agricultural products as part of the existing
29 comprehensive scheme to regulate agricultural commodities, the
30 legislature declares:

31 (1) That the marketing of agricultural products within this state
32 is in the public interest. It is vital to the continued economic well-
33 being of the citizens of this state and their general welfare that its
34 agricultural commodities be properly promoted by (a) enabling producers
35 of agricultural commodities to help themselves in establishing orderly,
36 fair, sound, efficient, and unhampered marketing, grading, and
37 standardizing of the commodities they produce and (b) working towards
38 stabilizing the agricultural industry by increasing consumption of

1 agricultural commodities within the state, the nation, and
2 internationally;

3 (2) That farmers and ranchers operate within a regulatory
4 environment that imposes burdens on them for the benefit of society and
5 the citizens of the state and includes restrictions on marketing
6 autonomy. Those restrictions may impair the agricultural producer's
7 ability to compete in local, domestic, and foreign markets;

8 (3) That it is now in the overriding public interest that support
9 for the agricultural industry be clearly expressed, that adequate
10 protection be given to agricultural commodities, uses, activities, and
11 operations, and that each agricultural commodity be promoted
12 individually, and as part of a comprehensive industry to:

13 (a) Enhance the reputation of Washington state's agricultural
14 commodities;

15 (b) Increase the sale and use of Washington state's agricultural
16 commodities in local, domestic, and foreign markets;

17 (c) Protect the public by educating the public in reference to the
18 quality, care, and methods used in the production of Washington state's
19 agricultural commodities;

20 (d) Increase the knowledge of the health-giving qualities and
21 dietetic value of Washington state's agricultural commodities and
22 products; and

23 (e) Support and engage in programs or activities that benefit the
24 planting, production, harvesting, handling, processing, marketing, and
25 uses of agricultural commodities produced in Washington state;

26 (4) That the director seek to enhance, protect, and perpetuate the
27 ability of the private sector to produce food and fiber, and seek to
28 maintain the economic well-being of the agricultural industry in
29 Washington state consistent with its regulatory activities and
30 responsibilities;

31 (5) That the director is hereby authorized to implement,
32 administer, and enforce this chapter through the establishment of
33 commodity commissions; and

34 (6) That this chapter is enacted in the exercise of the police
35 powers of this state for the purpose of protecting the health, peace,
36 safety, and general welfare of the people of this state.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 15.65 RCW
38 to read as follows:

1 This chapter and the rules adopted under it are only one aspect of
2 the comprehensively regulated agricultural industry.

3 (1) Other laws applicable to agricultural commodities include the
4 following chapters and the rules adopted thereunder:

5 Chapter 15.08 RCW Horticultural pests and diseases;
6 Chapter 15.13 RCW Horticultural plants and facilities--Inspection
7 and licensing;
8 Chapter 15.14 RCW Planting stock;
9 Chapter 15.15 RCW Certified seed potatoes;
10 Chapter 15.17 RCW Standards of grades and packs;
11 Chapter 15.19 RCW Certification and inspection of ginseng;
12 Chapter 15.30 RCW Controlled atmosphere storage of fruits and
13 vegetables;
14 Chapter 15.49 RCW Seeds;
15 Chapter 15.53 RCW Commercial feed;
16 Chapter 15.54 RCW Fertilizers, minerals, and limes;
17 Chapter 15.58 RCW Washington pesticide control act;
18 Chapter 15.60 RCW Apiaries;
19 Chapter 15.64 RCW Farm marketing;
20 Chapter 15.83 RCW Agricultural marketing and fair practices;
21 Chapter 15.85 RCW Aquaculture marketing;
22 Chapter 15.86 RCW Organic food products;
23 Chapter 15.92 RCW Center for sustaining agriculture and natural
24 resources;
25 Chapter 17.24 RCW Insect pests and plant diseases;
26 Chapter 19.94 RCW Weights and measures;
27 Chapter 20.01 RCW Agricultural products--Commission merchants,
28 dealers, brokers, buyers, agents;
29 Chapter 22.09 RCW Agricultural commodities;
30 Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including
31 provisions of 21 C.F.R. relating to the general manufacturing
32 practices, food labeling, food standards, food additives, and pesticide
33 tolerances;
34 Chapter 69.07 RCW Washington food processing act;
35 Chapter 69.25 RCW Washington wholesome eggs and egg products act;
36 Chapter 69.28 RCW Honey;

37 7 U.S.C., chapter 6, Federal Insecticide, Fungicide, and
38 Rodenticide Act.

1 (2) In addition to the laws and regulations listed in subsection
2 (1) of this section that apply to the agricultural industry as a whole,
3 the dry pea and lentil industry is regulated by or must comply with the
4 additional laws and rules adopted under 7 U.S.C., chapter 38,
5 Agricultural Marketing Act.

6 **Sec. 4.** RCW 15.65.040 and 2001 c 315 s 4 are each amended to read
7 as follows:

8 (~~It is hereby declared to be the policy of this chapter~~) The
9 director may establish a commodity commission under this chapter for
10 any of the following purposes:

11 (1) To aid agricultural producers in preventing economic waste in
12 the marketing of their agricultural commodities and in developing more
13 efficient methods of marketing agricultural products.

14 (2) To enable agricultural producers of this state, with the aid of
15 the state:

16 (a) To develop, and engage in research for developing, better and
17 more efficient production, irrigation, processing, transportation,
18 handling, marketing, and utilization of agricultural products;

19 (b) To establish orderly marketing of agricultural commodities;

20 (c) To provide for uniform grading and proper preparation of
21 agricultural commodities for market;

22 (d) To provide methods and means (including, but not limited to,
23 public relations and promotion) for the maintenance of present markets
24 and for the development of new or larger markets, both domestic and
25 foreign, for agricultural commodities produced within this state and
26 for the prevention, modification, or elimination of trade barriers
27 which obstruct the free flow of such agricultural commodities to
28 market;

29 (e) To eliminate or reduce economic waste in the marketing and/or
30 use of agricultural commodities;

31 (f) To restore and maintain adequate purchasing power for the
32 agricultural producers of this state;

33 (g) To provide information or communicate on matters pertaining to
34 the production, irrigation, processing, transportation, marketing, or
35 uses of an agricultural commodity produced in Washington state to any
36 elected official or officer or employee of any agency;

37 (h) To provide marketing information and services for producers of
38 an agricultural commodity;

- 1 (i) To provide information and services for meeting resource
2 conservation objectives of producers of an agricultural commodity;
3 (j) To engage in cooperative efforts in the domestic or foreign
4 marketing of food products of an agricultural commodity;
5 (k) To provide for commodity-related education and training; and
6 (l) To accomplish all the declared policies of this chapter.
7 (3) To protect the interest of consumers by assuring a sufficient
8 pure and wholesome supply of agricultural commodities of good quality
9 at all seasons and times.

10 **Sec. 5.** RCW 15.65.050 and 1961 c 256 s 5 are each amended to read
11 as follows:

12 The director shall administer and enforce this chapter and it shall
13 be his or her duty to carry out its provisions and put them into force
14 in accordance with its terms, but issuance, amendment, modification,
15 and/or suspension (~~(and/or termination)~~) of marketing agreements and
16 orders and of any terms or provisions thereof shall be accomplished
17 according to the procedures set forth in this chapter and not
18 otherwise. Whenever he or she has reason to believe that the
19 issuance(~~(or)~~) or amendment (~~(or termination)~~) of a marketing agreement
20 or order will tend to effectuate any declared policy or purpose of this
21 chapter with respect to any agricultural commodity, and in the case of
22 application for issuance or amendment ten or more producers of such
23 commodity apply or (~~(in the case of application for termination ten~~
24 ~~percent of the affected producers so apply)~~) when a petition for
25 amendment is submitted by majority vote of a commodity commission, then
26 the director shall give due notice of, and an opportunity for, a public
27 hearing upon such issuance(~~(or)~~) or amendment (~~(or termination)~~), and
28 (~~(he)~~) the director shall issue marketing agreements and orders
29 containing the provisions specified in this chapter and from time to
30 time amend (~~(or terminate)~~) the same whenever upon compliance with and
31 on the basis of facts adduced in accordance with the procedural
32 requirements of this chapter he or she shall find that such agreement,
33 order, or amendment:

34 (1) Will tend to effectuate one or more of the declared policies of
35 this chapter and is needed in order to effectuate the same.

36 (2) Is reasonably adapted to accomplish the purposes and objects
37 for which it is issued and complies with the applicable provisions of
38 this chapter.

1 (3) Has been approved or favored by the percentages of producers
2 and/or handlers specified in and ascertained in accordance with this
3 chapter.

4 **Sec. 6.** RCW 15.65.060 and 1961 c 256 s 6 are each amended to read
5 as follows:

6 The director shall cause any (~~proposed~~) marketing agreement,
7 order proposed for issuance, or amendment (~~or termination~~) to be set
8 out in detailed form and reduced to writing, which writing is herein
9 designated "proposal." The director shall make and maintain on file in
10 the office of the department a copy of each proposal and a full and
11 complete record of all notices, hearings, findings, decisions, assents,
12 and all other proceedings relating to each proposal and to each
13 marketing agreement and order.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 15.65 RCW
15 to read as follows:

16 (1) The director may adopt rules necessary to carry out the
17 director's duties and responsibilities under this chapter including:

18 (a) The issuance, amendment, or termination of marketing orders or
19 agreements;

20 (b) Procedural, technical, or administrative rules which may
21 address and include, but are not limited to:

22 (i) The submission of a petition to issue, amend, or terminate a
23 marketing order or agreement under this chapter;

24 (ii) Nominations conducted under this chapter;

25 (iii) Elections of board members or referenda conducted under this
26 chapter;

27 (iv) Actions of the director upon a petition to issue, amend, or
28 terminate a marketing order or agreement;

29 (c) Rules that provide for a method to fund:

30 (i) The costs of staff support for all commodity commissions if the
31 position is not directly funded by the legislature; and

32 (ii) The actual costs related to the specific activity undertaken
33 on behalf of an individual commission.

34 (2) The director may adopt amendments to marketing agreements or
35 orders without conducting a referendum if the amendments are adopted
36 under the following criteria:

1 (a) The proposed amendments relate only to internal administration
2 of a marketing order or agreement and are not subject to violation by
3 a person;

4 (b) The proposed amendments adopt or incorporate by reference
5 without material change federal statutes or regulations, Washington
6 state statutes, or rules of other Washington state agencies, if the
7 material adopted or incorporated regulates the same activities as are
8 authorized under the marketing order or agreement;

9 (c) The proposed amendments only correct typographical errors, make
10 address or name changes, or clarify language of a rule without changing
11 the marketing order or agreement; and

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

14 **Sec. 8.** RCW 15.65.070 and 1987 c 393 s 5 are each amended to read
15 as follows:

16 The director shall publish notice of any hearing called for the
17 purpose of considering and acting upon any proposal for a period of not
18 less than two days in one or more newspapers of general circulation as
19 the director may prescribe. No such public hearing shall be held prior
20 to five days after the last day of such period of publication. Such
21 notice shall set forth the date, time and place of said hearing, the
22 agricultural commodity and the area covered by such proposal; a concise
23 statement of the proposal; a concise statement of each additional
24 subject upon which the director will hear evidence and make a
25 determination, and a statement that, and the address where, copies of
26 the proposal may be obtained. The director shall also mail (~~a copy of~~
27 ~~such~~) notice to all producers and handlers within the affected area
28 who may be directly affected by such proposal and whose names and
29 addresses appear, on the day next preceding the day on which such
30 notice is published, upon lists of such persons then on file in the
31 department.

32 **Sec. 9.** RCW 15.65.090 and 1961 c 256 s 9 are each amended to read
33 as follows:

34 (~~In any and every hearing conducted pursuant to any provision of~~
35 ~~this chapter~~) The director (~~and/or such examiner~~) shall have the
36 power to issue subpoenas for the production of any books, records, or
37 documents of any kind and to subpoena witnesses to be produced or to

1 appear (as the case may be) in the county wherein the principal party
2 involved in such hearing resides. No person shall be excused from
3 attending and testifying or from producing documentary evidence before
4 the director in obedience to the subpoena of the director on the ground
5 or for the reason that the testimony or evidence, documentary or
6 otherwise, required of him or her may tend to incriminate him or her or
7 subject him or her to a penalty or forfeiture, but no natural person
8 shall be prosecuted or subject to any penalty or forfeiture for or on
9 account of any transaction, matter or thing concerning which he or she
10 may be so required to testify or produce evidence, documentary or
11 otherwise, before the director in obedience to a subpoena issued by him
12 or her: PROVIDED, That no natural person so testifying shall be exempt
13 from prosecution and punishment for perjury committed in so testifying.
14 The superior court of the county in which any such hearing or
15 proceeding may be had, may compel the attendance of witnesses and the
16 production of records, papers, books, accounts, documents and testimony
17 as required by such subpoena. In case any witness refuses to attend or
18 testify or produce any papers required by the subpoena, the director or
19 his or her examiner shall so report to the superior court of the county
20 in which the proceeding is pending by petition setting forth that due
21 notice was given of the time and place of attendance of ((said)) the
22 witness or the production of ((said)) the papers and that the witness
23 has been summoned in the manner prescribed in this chapter and that the
24 fees and mileage of the witness have been paid or tendered to him or
25 her in accordance with RCW 2.40.020 and that he or she has failed to
26 attend or produce the papers required by the subpoena at the hearing,
27 cause, or proceeding specified in the notice and subpoena, or has
28 refused to answer questions propounded to him or her in the course of
29 such hearing, cause or proceeding, and shall ask an order of the court
30 to compel such witness to appear and testify before the director. The
31 court upon such petition shall enter an order directing the witness to
32 appear before the court at a time and place to be fixed in such order
33 and then and there show cause why he or she has not responded to the
34 subpoena. A certified copy of the show cause order shall be served
35 upon the witness. If it shall appear to the court that the subpoena
36 was regularly issued, the court shall enter a decree that ((said)) the
37 witness appear at the time and place fixed in the decree and testify or
38 produce the required papers, and on failing to obey said decree the
39 witness shall be dealt with as for contempt of court.

1 **Sec. 10.** RCW 15.65.120 and 1985 c 261 s 3 are each amended to read
2 as follows:

3 The recommended decision shall contain the text in full of any
4 recommended agreement, order, or amendment (~~((or termination))~~), and may
5 deny or approve the proposal in its entirety, or it may recommend a
6 marketing agreement, order, or amendment (~~((or termination))~~) containing
7 other or different terms or conditions from those contained in the
8 proposal: PROVIDED, That the same shall be of a kind or type
9 substantially within the purview of the notice of hearing and shall be
10 supported by evidence taken at the hearing or by documents of which the
11 director is authorized to take official notice. The final decision
12 shall set out in full the text of the agreement, order, or amendment
13 (~~((or termination))~~) covered thereby, and the director shall issue and
14 deliver or mail copies of (~~(said)~~) the final decision to all producers
15 and handlers within the affected area who may be directly affected by
16 such final decision and whose names and addresses appear, on the day
17 next preceding the day on which such final decision is issued, upon the
18 lists of such persons then on file in the department, and to all
19 parties of record appearing at the hearing, or their attorneys of
20 record. If the final decision denies the proposal in its entirety no
21 further action shall be taken by the director.

22 **Sec. 11.** RCW 15.65.170 and 1987 c 393 s 6 are each amended to read
23 as follows:

24 If the director determines that the requisite assent has been given
25 (~~((he shall issue and put any order or amendment thereto into force,~~
26 ~~whereupon each and every provision thereof shall have the force of law.~~
27 ~~Issuance shall be accomplished by publication of a notice for one day~~
28 ~~in a newspaper of general circulation in the affected area. The notice~~
29 ~~shall state that the order has been issued and put into force and where~~
30 ~~copies of such order may be obtained))~~ to issue or amend a marketing
31 order, the issuance or amendment shall be adopted by rule by the
32 director within thirty days of the validation of the vote. If the
33 director determines that the requisite assent has not been given no
34 further action shall be taken by the director upon the proposal, and
35 the order contained in the final decision shall be without force or
36 effect.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 15.65 RCW
2 to read as follows:

3 The director shall not be required to hold a public hearing or a
4 referendum more than once in any twelve-month period on petitions to
5 issue, amend, or terminate a commodity commission if any of the
6 following circumstances are present:

7 (1) The petition proposes to establish a marketing order or
8 agreement for the same commodity;

9 (2) The petition proposes the same or a similar amendment to a
10 marketing order or agreement; or

11 (3) The petition proposes to terminate the same marketing order or
12 agreement.

13 **Sec. 13.** RCW 15.65.180 and 1961 c 256 s 18 are each amended to
14 read as follows:

15 The director may, upon the advice of the commodity board serving
16 under any marketing agreement or order and without compliance with the
17 provisions of RCW 15.65.050 through 15.65.170(

18 ~~(1) Amend any marketing agreement or order as to any minor matter
19 or wording which does not substantially alter the provisions and
20 intention of such agreement or order;~~

21 ~~(2))~~, suspend any such agreement or order or term or provision
22 thereof for a period of not to exceed one year, if ~~((he))~~ the director
23 finds that such suspension will tend to effectuate the declared policy
24 of this chapter~~((: PROVIDED, That))~~. Any ~~((such))~~ suspension of all
25 or substantially all of ~~((such))~~ a marketing agreement or order by the
26 director shall not become effective until the end of the then current
27 marketing season.

28 NEW SECTION. **Sec. 14.** A new section is added to chapter 15.65 RCW
29 to read as follows:

30 The director may terminate a marketing order or agreement in
31 accordance with this chapter.

32 (1) To terminate a marketing order or agreement:

33 (a) The director must receive a petition by affected producers
34 under this chapter signed by at least ten percent of the affected
35 producers; or

36 (b) A majority of a commodity commission board may file a petition
37 with the director.

1 (2) The petitioners must include in the petition at the time of
2 filing:

3 (a) A statement of why the marketing order or agreement and the
4 commodity commission created under it the no longer meets the purposes
5 of this chapter;

6 (b) The name of a person designated to represent the petitioners;
7 and

8 (c) The effective date of a marketing order or agreement
9 termination, which may not be less than one year from the date the
10 petition was filed with the director.

11 (3) Within sixty days of receipt of a petition meeting the
12 requirements of this section, the director shall commence rule-making
13 proceedings to repeal the marketing order or agreement and,
14 subsequently, a referendum on the issue.

15 (4) The director shall include a copy of a petition to terminate a
16 marketing order or agreement with the notice to affected producers when
17 rule-making proceedings are commenced.

18 (5) If the petitioners fail to meet the requirements of this
19 chapter, the director shall deny the petition and a referendum vote
20 will not be conducted. The person designated to represent the
21 petitioners shall be notified if a petition is denied.

22 NEW SECTION. Sec. 15. A new section is added to chapter 15.65 RCW
23 to read as follows:

24 Except as provided in RCW 15.65.190 or subsection (4) of this
25 section, the director, prior to termination of the marketing order or
26 agreement, shall conduct a referendum as provided in this chapter, the
27 rules adopted by the director, and the applicable marketing order or
28 agreement.

29 (1) If a referendum on the termination of a marketing order or
30 agreement is assented to, the referendum proposal shall be adopted by
31 the director within thirty days of the count of the ballots and shall
32 go into effect under chapter 34.05 RCW. If those affected producers
33 eligible to vote in the referendum do not assent, no further action
34 shall be taken by the director on the proposal.

35 (2) The list of affected producers used for conducting a referendum
36 on the termination of a marketing order or agreement shall be kept in
37 the rule-making file by the director. The list shall be certified as
38 a true representation of the referendum mailing list. Inadvertent

1 failure to notify an affected producer does not invalidate a
2 referendum.

3 (3) The list of affected producers that is certified as the true
4 representation of the mailing list of a referendum shall be used to
5 determine assent as provided for in RCW 15.65.190.

6 (4) If the director determines that one hundred percent of the
7 affected producers have filed a written application with the director
8 requesting that a marketing order or agreement be terminated, the
9 director may terminate the marketing order or agreement without
10 conducting a referendum. The termination of the marketing order or
11 agreement shall go into effect under chapter 34.05 RCW, but no sooner
12 than at the end of the marketing season then current.

13 NEW SECTION. **Sec. 16.** A new section is added to chapter 15.65 RCW
14 to read as follows:

15 If after complying with the procedures outlined in this chapter and
16 a referendum proposal to terminate a marketing order or agreement is
17 assented to, the affected commodity commission shall:

18 (1) Document the details of all measures undertaken to terminate
19 the commodity commission and identify and document all closing costs;

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

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

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

35 **Sec. 17.** RCW 15.65.200 and 1985 c 261 s 8 are each amended to read
36 as follows:

1 (1) Whenever application is made for the issuance of a marketing
2 agreement or order or the director otherwise determines to hold a
3 hearing for the purpose of such issuance, the director or ((his)) a
4 designee shall ((cause lists to be prepared from any information which
5 he has at hand or which he may obtain from producers, associations of
6 producers and handlers of the affected commodity. Such lists shall
7 contain the names and addresses of persons who produce the affected
8 commodity within the affected area, the amount of such commodity
9 produced by each such person during the period which the director
10 determines for the purposes of the agreement or order to be
11 representative, and the name of any cooperative association authorized
12 to market for him within the affected area the commodity specified in
13 the marketing agreement or order. Such lists shall also contain the
14 names and addresses of persons who handle the affected commodity within
15 the affected area and the amount of such commodity handled by each
16 person during the period which the director determines for the purposes
17 of the agreement or order to be representative. Any qualified person
18 may at any time have his name placed upon any list for which he
19 qualifies by delivering or mailing his name, address and other
20 information to the director and in such case the director shall verify
21 such person's qualifications and if he qualifies, place his name upon
22 such list. At every hearing upon the issuance, amendment or
23 termination of such order or agreement the director or his designee
24 shall take evidence for the purpose of making such lists complete and
25 accurate and he may employ his powers of subpoena of witnesses and of
26 books, records and documents for such purpose. After every such
27 hearing the director shall compile, complete, correct and bring lists
28 up to date in accordance with the evidence and information obtained at
29 such hearing. For all purposes of giving notice, holding referenda and
30 electing members of commodity boards, the lists on hand corrected up to
31 the day next preceding the date for issuing notices or ballots as the
32 case may be shall, for all purposes of this chapter, be deemed to be
33 the list of all persons entitled to notice or to assent or dissent or
34 to vote)) establish a list of affected parties along with volume of
35 production data covering a minimum three-year period, or in such lesser
36 time as the affected party has produced the commodity in question, from
37 information provided by the petitioners, by obtaining information on
38 affected parties from applicable producer, handler, or processor

1 organizations or associations or other sources identified as
2 maintaining the information.

3 (2) The director shall use the list of affected parties for the
4 purpose of notice, referendum proceedings, and electing and selecting
5 members of commodity boards in accordance with this chapter.

6 (3) An affected party may at any time file his or her name and
7 mailing address with the director. A list of affected parties may be
8 brought up-to-date by the director up to the day preceding a mailing of
9 a notice or ballot under this chapter and that list is deemed the list
10 of affected parties entitled to vote.

11 (4) The list of affected parties used for the issuance of a
12 marketing order or agreement shall be kept in a file maintained by the
13 director. The list shall be certified as a true representation of the
14 mailing list. Inadvertent failure to notify an affected party does not
15 invalidate a proceeding conducted under this chapter.

16 (5) The list of affected parties that is certified as the true
17 representation of the mailing list of a referendum shall be used to
18 determine assent as provided in this chapter.

19 (6) The director shall provide the commodity commission the list of
20 affected and interested parties once a marketing order or agreement is
21 adopted and a commodity commission is established as provided in this
22 chapter.

23 NEW SECTION. Sec. 18. A new section is added to chapter 15.65 RCW
24 to read as follows:

25 (1) Pursuant to RCW 42.17.31907, certain agricultural business
26 records, commodity commission records, and department of agriculture
27 records relating to commodity commissions and producers of agricultural
28 commodities are exempt from public disclosure.

29 (2) Financial and commercial information and records submitted to
30 either the department or a commodity commission for the purpose of
31 administering this chapter or a marketing order or agreement may be
32 shared between the department and the applicable commodity commission.
33 They may also be used, if required, in any suit or administrative
34 hearing involving this chapter or a marketing order or agreement.

35 (3) This chapter does not prohibit:

36 (a) The issuance of general statements based upon the reports of a
37 number of persons subject to any marketing order or agreement as long

1 as the statements do not identify the information furnished by any
2 person; or

3 (b) The publication by the director or a commodity commission of
4 the name of any person violating any marketing order or agreement and
5 a statement of the manner of the violation by that person.

6 NEW SECTION. Sec. 19. A new section is added to chapter 15.65 RCW
7 to read as follows:

8 (1) Upon completion of any vote, referendum, or nomination and
9 elections, the department shall tally the results of the vote and
10 provide the results to affected parties.

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

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

18 **Sec. 20.** RCW 15.65.220 and 1961 c 256 s 22 are each amended to
19 read as follows:

20 (1) Every marketing agreement and order shall provide for the
21 establishment of a commodity board of not less than five nor more than
22 thirteen members and shall specify the exact number thereof and all
23 details as to (a) qualification, (b) nomination, (c) election or
24 appointment by the director, (d) term of office, and (e) powers,
25 duties, and all other matters pertaining to such board.

26 (2) The members of the board shall be producers or handlers or both
27 in such proportion as the director shall specify in the marketing
28 agreement or order, but in any marketing order or agreement the number
29 of handlers on the board shall not exceed the number of producers
30 thereon. The marketing order or agreement may provide that a majority
31 of the board be appointed by the director, but in any event, no less
32 than one-third of the board members shall be elected by the affected
33 producers.

34 (3) In the event that the marketing order or agreement provides
35 that a majority of the commodity board be appointed by the director,
36 the marketing order or agreement shall incorporate either the
37 provisions of section 24 or 25 of this act for board member selection.

1 (4) The director shall appoint to every ~~((such))~~ board one
2 ~~((person))~~ member who ~~((is neither a producer nor a handler to))~~
3 represents the ~~((department and the public generally))~~ director. The
4 director shall be a voting member of each commodity commission.

5 **Sec. 21.** RCW 15.65.230 and 2001 c 315 s 5 are each amended to read
6 as follows:

7 A producer member of each commodity board must be a practical
8 producer of the affected commodity and must be a citizen, resident of
9 this state, and over the age of eighteen years. Each producer board
10 member must be and have been actually engaged in producing such a
11 commodity within the state of Washington for a period of five years and
12 have, during that period, derived a substantial portion of his or her
13 income therefrom and not be engaged in business, directly or
14 indirectly, as a handler or other dealer. A handler member of each
15 board must be a practical handler of the affected commodity and must be
16 a citizen, resident of this state, and over the age of ~~((twenty-five))~~
17 eighteen years. Each handler board member must be and have been,
18 either individually or as an officer or employee of a corporation,
19 firm, partnership, association, or cooperative, actually engaged in
20 handling such a commodity within the state of Washington for a period
21 of five years and have, during that period, derived a substantial
22 portion of his or her income therefrom. The qualification of a member
23 of the board as set forth in this section must continue during the term
24 of office.

25 **Sec. 22.** RCW 15.65.235 and 1971 c 25 s 1 are each amended to read
26 as follows:

27 Whenever any commodity board is formed under the provisions of this
28 chapter and it only affects producers and producer-handlers, then such
29 producer-handlers shall be considered to be acting only as producers
30 for purpose of ~~((election and))~~ membership on a commodity board:
31 PROVIDED, That this section shall not apply to a commodity board which
32 only affects producers and producer-handlers of essential oils.

33 **Sec. 23.** RCW 15.65.240 and 1961 c 256 s 24 are each amended to
34 read as follows:

35 The term of office of board members shall be three years, and one-
36 third as nearly as may be shall be elected or appointed every year:

1 PROVIDED, That at the inception of any agreement or order the entire
2 board shall be elected or appointed one-third for a term of one year,
3 one-third for a term of two years and one-third for a term of three
4 years to the end that memberships on such board shall be on a rotating
5 basis. In the event an order or agreement provides that both producers
6 and handlers shall be members of such board the terms of each type of
7 member shall be so arranged that one-third of the handler members as
8 nearly as may be and one-third of the producer members as nearly as may
9 be shall be elected or appointed each year.

10 Any marketing agreement or order may provide for election or
11 appointment of board members by districts, in which case district lines
12 and the number of board members to be elected or appointed from each
13 district shall be specified in such agreement or order and upon such
14 basis as the director finds to be fair and equitable and reasonably
15 adapted to effectuate the declared policies of this chapter.

16 NEW SECTION. Sec. 24. A new section is added to chapter 15.65 RCW
17 to read as follows:

18 (1) This section or section 25 of this act applies when the
19 director appoints a majority of the board positions as set forth under
20 RCW 15.65.220(3).

21 (2) Candidates for director-appointed board positions on a
22 commodity commission shall be nominated under RCW 15.65.250.

23 (3) The director shall cause an advisory vote to be held for the
24 director-appointed positions. Not less than ten days in advance of the
25 vote, advisory ballots shall be mailed to all producers or handlers
26 entitled to vote, if their names appear upon the list of affected
27 parties or affected producers or handlers, whichever is applicable.
28 Notice of every advisory vote for board membership shall be published
29 in a newspaper of general circulation within the affected area defined
30 in the order or agreement not less than ten days in advance of the date
31 of the vote. The advisory ballot shall be conducted in a manner so
32 that it is a secret ballot. The names of the two candidates receiving
33 the most votes in the advisory vote shall be forwarded to the director
34 for potential appointment to the commission board. In the event there
35 are only two candidates nominated for a board position, an advisory
36 vote may not be held and the candidates' names shall be forwarded to
37 the director for potential appointment.

1 (4) The candidates whose names are forwarded to the director for
2 potential appointment shall submit to the director a letter stating why
3 he or she wishes to be appointed to the commission board. The director
4 may select either person for the position.

5 NEW SECTION. **Sec. 25.** A new section is added to chapter 15.65 RCW
6 to read as follows:

7 (1) This section or section 24 of this act applies when the
8 director appoints a majority of the board positions as set forth under
9 RCW 15.65.220(3).

10 (2) Candidates for director-appointed board positions on a
11 commission shall be nominated under RCW 15.65.250.

12 (3) The director shall cause an advisory vote to be held for the
13 director-appointed positions. Not less than ten days in advance of the
14 vote, advisory ballots shall be mailed to all producers or handlers
15 entitled to vote, if their names appear upon the list of affected
16 parties or affected producers or handlers, whichever is applicable.
17 Notice of every advisory vote for board membership shall be published
18 in a newspaper of general circulation within the affected area defined
19 in the order or agreement not less than ten days in advance of the date
20 of the vote. The advisory ballot shall be conducted in a manner so
21 that it is a secret ballot. The name of the candidate receiving the
22 most votes in the advisory vote shall be forwarded to the director for
23 appointment to the commission board.

24 (4) The director shall appoint the candidate receiving the most
25 votes in an advisory ballot unless the candidate fails to meet the
26 qualifications of commodity board members under this chapter and the
27 marketing order. In the event the director rejects the candidate
28 receiving the most votes, the position is vacant and shall be filled
29 under RCW 15.65.270(2).

30 **Sec. 26.** RCW 15.65.250 and 1987 c 393 s 7 are each amended to read
31 as follows:

32 For the purpose of nominating candidates (~~((to be voted upon))~~) for
33 (~~((election to such))~~) board memberships, the director shall call
34 separate meetings of the affected producers and handlers within the
35 affected area and in case elections shall be by districts (~~((he))~~) the
36 director shall call separate meetings for each district. However, at
37 the inception any marketing agreement or order nominations may be at

1 the issuance hearing. Nomination meetings shall be called annually and
2 at least thirty days in advance of the date set for the election of
3 board members. Notice of every such meeting shall be published in a
4 newspaper of general circulation within the affected area defined in
5 the order or agreement not less than ten days in advance of the date of
6 such meeting and in addition, written notice of every such meeting
7 shall be given to all on the list of affected parties or affected
8 producers and/or handlers ((according to the list thereof maintained by
9 the director pursuant to RCW 15.65.200)), whichever is applicable.
10 However, if the agreement or order provides for election by districts
11 such written notice need be given only to the producers or handlers
12 residing in or whose principal place of business is within such
13 district. Nonreceipt of notice by any interested person shall not
14 invalidate proceedings at such meetings. Any qualified person may be
15 nominated orally for membership upon such board at the said meetings.
16 Nominations may also be made within five days after any such meeting by
17 written petition filed with the director signed by not less than five
18 producers or handlers, as the case may be, entitled to have
19 participated in said meeting.

20 If the board moves and the director approves that the nomination
21 meeting procedure be deleted, the director shall give notice of the
22 vacancy by mail to all affected producers or handlers. The notice
23 shall call for nominations in accordance with the marketing order or
24 agreement and shall give the final date for filing nominations which
25 shall not be less than twenty days after the notice was mailed.

26 Not more than one board member may be part of the same "person" as
27 defined by this chapter. When only one nominee is nominated for any
28 position on the board, the director shall ~~((deem that said nominee~~
29 ~~satisfies the requirements of the position and then it shall be deemed~~
30 ~~that said nominee has been duly))~~ determine whether the nominee meets
31 the qualifications for the position and, if so, the director shall
32 declare the nominee elected or appoint the nominee to the position.

33 **Sec. 27.** RCW 15.65.260 and 1985 c 261 s 10 are each amended to
34 read as follows:

35 (1) The elected members of every ~~((such))~~ commodity board shall be
36 elected by secret mail ballot under the supervision of the director.
37 Elected producer members of ~~((such))~~ the board shall be elected by a
38 majority of the votes cast by the affected producers within the

1 affected area, but if the marketing order or agreement provides for
2 districts such producer members of the board shall be elected by a
3 majority of the votes cast by the affected producers in the respective
4 districts. Each affected producer within the affected area shall be
5 entitled to one vote. Elected handler members of the board shall be
6 elected by a majority of the votes cast by the affected handlers within
7 the affected area, but if the marketing order or agreement provides for
8 districts such handler members of the board shall be elected by a
9 majority of the votes cast by the affected handlers in the respective
10 districts. Each affected handler within the affected area shall be
11 entitled to one vote.

12 If a nominee does not receive a majority of the votes on the first
13 ballot a run-off election shall be held by mail in a similar manner
14 between the two candidates for such position receiving the largest
15 number of votes.

16 (2) Notice of every election for board membership shall be
17 published in a newspaper of general circulation within the affected
18 area defined in the order or agreement not less than ten days in
19 advance of the date of such election. Not less than ten days prior to
20 every election for board membership, the director shall mail a ballot
21 of the candidates to each producer and handler entitled to vote whose
22 name appears upon the list (~~((thereof compiled and maintained by the
23 director in accordance with RCW 15.65.200))~~) of affected parties or
24 affected producers or handlers, whichever is applicable. Any other
25 producer or handler entitled to vote may obtain a ballot by application
26 to the director upon establishing his or her qualifications.
27 Nonreceipt of a ballot by any person entitled to vote shall not
28 invalidate the election of any board member.

29 **Sec. 28.** RCW 15.65.270 and 2001 2nd sp.s. c 6 s 1 are each amended
30 to read as follows:

31 (1) In the event of a vacancy in an elected position on the board,
32 the remaining board members shall select a qualified person to fill the
33 (~~((unexpired term. A majority of the voting members of the board shall
34 constitute a quorum for the transaction of all business and the
35 carrying out of all duties of the board.))~~) vacant position for the
36 remainder of the current term or as provided in the marketing order or
37 agreement.

1 (2) In the event of a vacancy on the board in a position appointed
2 by the director, the remaining board members shall recommend to the
3 director a qualified person for appointment to the vacant position.
4 The director shall appoint the person recommended by the board unless
5 the person fails to meet the qualifications of board members under this
6 chapter and the marketing order or agreement.

7 (3) A majority of the voting members of the board shall constitute
8 a quorum for the transaction of all business and the carrying out of
9 all duties of the board.

10 (4) Each member of the board shall be compensated in accordance
11 with RCW 43.03.230. Members and employees of the board may be
12 reimbursed for actual travel expenses incurred in carrying out the
13 provisions of this chapter, as defined under the commodity board's
14 marketing order or agreement. Otherwise, if not defined or referenced
15 in the marketing order or agreement, reimbursement for travel expenses
16 shall be at the rates allowed state employees in accordance with RCW
17 43.03.050 and 43.03.060.

18 **Sec. 29.** RCW 15.65.280 and 2001 c 315 s 6 are each amended to read
19 as follows:

20 The powers and duties of the board shall be:

21 (1) To elect a chairman and such other officers as it deems
22 advisable;

23 (2) To advise and counsel the director with respect to the
24 administration and conduct of such marketing agreement or order;

25 (3) To recommend to the director administrative rules(~~(7~~
26 ~~regulations)) and orders and amendments thereto for the exercise of his
27 or her powers in connection with such agreement or order;~~

28 (4) To advise the director upon any and all assessments provided
29 pursuant to the terms of such agreement or order and upon the
30 collection, deposit, withdrawal, disbursement and paying out of all
31 moneys;

32 (5) To assist the director in the collection of such necessary
33 information and data as the director may deem necessary in the proper
34 administration of this chapter;

35 (6) To administer the order or agreement as its administrative
36 board if the director designates it so to do in such order or
37 agreement;

1 (7) To work cooperatively with other local, state, and federal
2 agencies; universities; and national organizations for the purposes
3 provided in the board's marketing order or agreement;

4 (8) To enter into contracts or interagency agreements with any
5 private or public agency, whether federal, state, or local, to carry
6 out the purposes provided in the board's marketing order or agreement.

7 Personal service contracts must comply with chapter 39.29 RCW;

8 (9) To accept and expend or retain any gifts, bequests,
9 contributions, or grants from private persons or private and public
10 agencies to carry out the purposes provided in the board's marketing
11 order or agreement;

12 (10) To retain in emergent situations the services of private legal
13 counsel to conduct legal actions on behalf of a board. The retention
14 of a private attorney is subject to review by the office of the
15 attorney general;

16 (11) To engage in appropriate fund-raising activities for the
17 purpose of supporting activities of the board authorized by the
18 marketing order or agreement;

19 (12) To enter into contracts or agreements for research in the
20 production, irrigation, processing, transportation, marketing, use, or
21 distribution of an affected commodity;

22 (13) To participate in international, federal, state, and local
23 hearings, meetings, and other proceedings relating to the production,
24 irrigation, manufacture, regulation, transportation, distribution,
25 sale, or use of affected commodities including activities authorized
26 under RCW 42.17.190, including the reporting of those activities to the
27 public disclosure commission; ((and))

28 (14) To maintain a list of the names and addresses of affected
29 producers that may be compiled from information used to collect
30 assessments under the marketing order or agreement, and data on the
31 value of each producer's production for a minimum three-year period;

32 (15) To maintain a list of the names and addresses of persons who
33 handle the affected commodity within the affected area and data on the
34 amount and value of the commodity handled for a minimum three-year
35 period by each person; and

36 (16) To perform such other duties as the director may prescribe in
37 the marketing agreement or order.

38 Any agreement or order under which the commodity board administers
39 the order or agreement shall (if so requested by the affected producers

1 within the affected area in the proposal or promulgation hearing)
2 contain provisions whereby the director reserves the power to approve
3 or disapprove every order, rule or directive issued by the board, in
4 which event such approval or disapproval shall be based on whether or
5 not the director believes the board's action has been carried out in
6 conformance with the purposes of this chapter.

7 NEW SECTION. **Sec. 30.** A new section is added to chapter 15.65 RCW
8 to read as follows:

9 (1) Each commodity commission shall prepare a list of all affected
10 producers from any information available from the department,
11 producers, producer associations or organizations, or handlers of the
12 affected commodity. This list shall contain the names and addresses of
13 all affected persons who produce the affected commodity and the amount,
14 by unit, of the affected commodity produced during at least the past
15 three years.

16 (2) Each commodity commission shall prepare a list of all persons
17 who handle the affected commodity and the amount of the commodity
18 handled by each person during at least the past three years.

19 (3) It is the responsibility of all affected parties to ensure that
20 their correct address is filed with the commodity commission. It is
21 also the responsibility of affected parties to submit production data
22 and handling data to the commission as prescribed by the commission's
23 marketing order or agreement.

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

29 (5) At the director's request, the commodity commission shall
30 provide the director a list of affected producers or handlers that is
31 certified by the commission to be complete according to the
32 commission's records. The list shall contain all information required
33 by the director to conduct a referendum or board member election or
34 selection under this chapter and the marketing order or agreement.

35 (6) For all purposes of giving notice, holding referenda, and
36 electing or selecting members of a commodity board, the applicable list
37 corrected up to the day preceding the date the list is certified by the
38 commission and mailed to the director is deemed to be the list of all

1 affected producers or affected handlers, as applicable, entitled to
2 notice or to vote. Inadvertent failure to notify an affected producer
3 or handler does not invalidate a proceeding conducted under this
4 chapter.

5 NEW SECTION. **Sec. 31.** A new section is added to chapter 15.65 RCW
6 to read as follows:

7 Agricultural commodity commissions shall adopt rules governing
8 promotional hosting expenditures by commodity commission employees,
9 agents, or board members under RCW 15.04.200.

10 **Sec. 32.** RCW 15.65.375 and 1988 c 54 s 1 are each amended to read
11 as follows:

12 Any marketing agreement or order may authorize the members of a
13 commodity board, or their agents or designees, to participate in
14 federal or state hearings or other proceedings concerning regulation of
15 the manufacture, distribution, sale, or use of any pesticide as defined
16 by RCW 15.58.030(~~((+1))~~) (30) or any agricultural chemical which is of
17 use or potential use in producing the affected commodity. Any
18 marketing agreement or order may authorize the expenditure of commodity
19 board funds for this purpose.

20 **Sec. 33.** RCW 15.65.380 and 1961 c 256 s 38 are each amended to
21 read as follows:

22 Any marketing agreement or order may contain any other, further,
23 and different provisions which are incidental to and not inconsistent
24 with this chapter and which the director finds to be needed and
25 reasonably adapted to effectuate the declared policies of this chapter.
26 ~~((Such))~~ The provisions shall set forth the detailed application of
27 this chapter to the affected agricultural commodity. ~~((The director or
28 his designee shall have the power to make rules and regulations of a
29 technical or administrative nature under this chapter and/or under any
30 agreement or order issued pursuant to this chapter.))~~

31 **Sec. 34.** RCW 15.65.430 and 1961 c 256 s 43 are each amended to
32 read as follows:

33 Any moneys collected or received by the director or his or her
34 designee pursuant to the provisions of any marketing agreement or order
35 during or with respect to any season or year may be refunded on a pro

1 rata basis at the close of such season or year or at the close of such
2 longer period as the director determines to be reasonably adapted to
3 effectuate the declared policies of this chapter and the purposes of
4 such marketing agreement or order, to all persons from whom such moneys
5 were collected or received, or may be carried over into and used with
6 respect to the next succeeding season, year or period whenever the
7 director or ((his)) a designee finds that the same will tend to
8 effectuate such policies and purposes. ((Upon the termination of any
9 marketing agreement or order, any and all moneys remaining, and not
10 required to defray the expenses or repay the obligations incurred and
11 undertaken pursuant to such agreement or order, shall be returned by
12 the director upon a pro rata basis to all persons from whom such moneys
13 were collected or received. However, if the director finds that the
14 amounts so returnable are so small as to make impractical the
15 computation and remitting of such pro rata refund to such persons, the
16 director may use such moneys to defray expenses incurred by him in the
17 formulation, issuance, administration or enforcement of any subsequent
18 marketing agreement or order for such commodity. Thereafter, if there
19 are any such moneys remaining which have not been used by the director
20 as hereinabove provided, the same shall be withdrawn from the approved
21 depository and paid into the state treasury as unclaimed trust
22 moneys.))

23 **Sec. 35.** RCW 15.65.450 and 1961 c 256 s 45 are each amended to
24 read as follows:

25 Prior to the issuance of any marketing agreement or order, the
26 director may require the applicants therefor to deposit with him or her
27 such amount of money as the director may deem necessary to defray the
28 expenses of preparing and making effective such agreement or order.
29 ((The director or his designee may reimburse the applicant from any
30 moneys received by him under such agreement or order for any moneys so
31 deposited by such applicant and/or for any necessary expenses incurred
32 by such applicant in preparing and obtaining approval of such marketing
33 agreement or order upon receipt of a verified statement of such expense
34 approved by the director or his designee.))

35 (1) A commodity commission shall reimburse the department for
36 expenses incurred by the department when a commodity commission
37 petitions the director to amend or terminate a marketing order or
38 agreement and for other services provided by the department under this

1 chapter. The department shall provide to a commodity commission an
2 estimate of expenses that may be incurred to amend or terminate a
3 marketing order or agreement prior to any services taking place.

4 (2) Petitioners who are not a majority of a commodity commission
5 board, and who file a petition with the director to issue, amend, or
6 terminate a marketing order or agreement, shall deposit funds with the
7 director to pay for expenses incurred by the department, under rules
8 adopted by the director.

9 (3) A commodity commission shall reimburse petitioners the amount
10 paid to the department under the following circumstances:

11 (a) If the petition is to issue a marketing order or agreement, the
12 commodity commission shall reimburse the petitioners the amount
13 expended by the department when funds become available after
14 establishment of the commission; or

15 (b) If the petition is to amend or terminate a marketing order or
16 agreement and the proposal is assented to by the affected parties or
17 affected producers, the commodity commission shall reimburse the
18 petitioners within thirty days of the referendum.

19 (4) If for any reason a proceeding is discontinued, the commodity
20 commission or petitioners, whichever is applicable, shall only
21 reimburse the department for expenses incurred by the department up
22 until the time the proceeding is discontinued.

23 **Sec. 36.** RCW 15.65.570 and 1961 c 256 s 57 are each amended to
24 read as follows:

25 (1) All proceedings ((held by the director for the promulgation of
26 any marketing agreement or order and the amendment, modification, or
27 dissolution thereof and all proceedings concerning the promulgation of
28 any rules or regulations or the amendment or modification thereof and
29 appeals therefrom)) conducted under this chapter shall be subject to
30 the provisions of chapter 34.05 RCW ((as enacted or hereafter amended))
31 unless otherwise provided for in this chapter.

32 (2) Rule-making proceedings conducted under this chapter are exempt
33 from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory
34 fairness act, and RCW 43.135.055 when the adoption of the rules is
35 determined by a referendum vote of the affected parties.

36 NEW SECTION. **Sec. 37.** The following acts or parts of acts are
37 each repealed:

1 (1) RCW 15.65.030 (Declaration of purpose and police power) and
2 1961 c 256 s 3;

3 (2) RCW 15.65.080 (Hearings public--Oaths--Record--Administrative
4 law judge, powers) and 1981 c 67 s 18 & 1961 c 256 s 8;

5 (3) RCW 15.65.460 (Marketing act revolving fund--Composition) and
6 1961 c 256 s 46; and

7 (4) RCW 15.65.405 (Annual assessment in excess of the fiscal growth
8 factor under chapter 43.135 RCW--Hop commodity board--Mint commodity
9 board) and 1995 c 109 s 1.

10 NEW SECTION. **Sec. 38.** A new section is added to chapter 15.66 RCW
11 to read as follows:

12 The history, economy, culture, and the future of Washington state
13 to a large degree all involve agriculture. In order to develop and
14 promote Washington's agricultural products as part of the existing
15 comprehensive scheme to regulate agricultural commodities, the
16 legislature declares:

17 (1) That the marketing of agricultural products within this state
18 is in the public interest. It is vital to the continued economic well-
19 being of the citizens of this state and their general welfare that its
20 agricultural commodities be properly promoted by (a) enabling producers
21 of agricultural commodities to help themselves in establishing orderly,
22 fair, sound, efficient, and unhampered marketing, grading, and
23 standardizing of the commodities they produce; and (b) working towards
24 stabilizing the agricultural industry by increasing consumption of
25 agricultural commodities within the state, the nation, and
26 internationally;

27 (2) That farmers and ranchers operate within a regulatory
28 environment that imposes burdens on them for the benefit of society and
29 the citizens of the state and includes restrictions on marketing
30 autonomy. Those restrictions may impair the agricultural producer's
31 ability to compete in local, domestic, and foreign markets;

32 (3) That it is now in the overriding public interest that support
33 for the agricultural industry be clearly expressed, that adequate
34 protection be given to agricultural commodities, uses, activities, and
35 operations, and that each agricultural commodity be promoted
36 individually, and as part of a comprehensive industry to:

37 (a) Enhance the reputation of Washington state's agricultural
38 commodities;

1 (b) Increase the sale and use of Washington state's agricultural
2 commodities in local, domestic, and foreign markets;

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

6 (d) Increase the knowledge of the health-giving qualities and
7 dietetic value of Washington state's agricultural commodities and
8 products; and

9 (e) Support and engage in programs or activities that benefit the
10 planting, production, harvesting, handling, processing, marketing, and
11 uses of agricultural commodities produced in Washington state;

12 (4) That the director seek to enhance, protect, and perpetuate the
13 ability of the private sector to produce food and fiber, and seek to
14 maintain the economic well-being of the agricultural industry in
15 Washington state consistent with its regulatory activities and
16 responsibilities;

17 (5) That the director is hereby authorized to implement,
18 administer, and enforce this chapter through the establishment of
19 commodity commissions; and

20 (6) That this chapter is enacted in the exercise of the police
21 powers of this state for the purpose of protecting the health, peace,
22 safety, and general welfare of the people of this state.

23 **Sec. 39.** RCW 15.66.010 and 1993 c 80 s 3 are each amended to read
24 as follows:

25 For the purposes of this chapter:

26 (1) "Director" means the director of agriculture of the state of
27 Washington or any qualified person or persons designated by the
28 director of agriculture to act for him or her concerning some matter
29 under this chapter.

30 (2) "Department" means the department of agriculture of the state
31 of Washington.

32 (3) "Marketing order" means an order (~~issued~~) adopted by rule by
33 the director that establishes a commodity commission for an
34 agricultural commodity pursuant to this chapter.

35 (4) "Agricultural commodity" means any of the following commodities
36 or products: Llamas, alpacas, or any other animal or any distinctive
37 type of agricultural, horticultural, viticultural, vegetable, and/or
38 animal product, including, but not limited to, products qualifying as

1 organic food products under chapter 15.86 RCW and private sector
2 cultured aquatic products as defined in RCW 15.85.020 and other fish
3 and fish products, within its natural or processed state, including
4 beehives containing bees and honey and Christmas trees but not
5 including timber or timber products. The director is authorized to
6 determine what kinds, types or subtypes should be classed together as
7 an agricultural commodity for the purposes of this chapter.

8 (5) "Producer" means any person engaged in the business of
9 producing or causing to be produced for market in commercial quantities
10 any agricultural commodity. "To produce" means to act as a producer.
11 For the purposes of (~~RCW 15.66.060, 15.66.090, and 15.66.120, as now~~
12 ~~or hereafter amended~~)) this chapter, "producer" shall include bailees
13 who contract to produce or grow any agricultural product on behalf of
14 a bailor who retains title to the seed and its resulting agricultural
15 product or the agricultural product delivered for further production or
16 increase.

17 (6) "Affected producer" means any producer (~~of an affected~~
18 ~~commodity~~)) who is subject to a marketing order.

19 (7) "Affected commodity" means (~~any agricultural commodity for~~
20 ~~which the director has established a list of producers pursuant to RCW~~
21 ~~15.66.060~~)) the agricultural commodity that is specified in the
22 marketing order.

23 (8) "Commodity commission" or "commission" means a commission
24 formed to carry out the purposes of this chapter under a particular
25 marketing order concerning an affected commodity.

26 (9) "Unit" means a unit of volume, quantity or other measure in
27 which an agricultural commodity is commonly measured.

28 (10) "Unfair trade practice" means any practice which is unlawful
29 or prohibited under the laws of the state of Washington including but
30 not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77,
31 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning
32 interstate or intrastate commerce that is unlawful under the provisions
33 of the act of Congress of the United States, September 26, 1914,
34 chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known
35 as the "Federal Trade Commission Act of 1914", or the violation of or
36 failure accurately to label as to grades and standards in accordance
37 with any lawfully established grades or standards or labels.

38 (11) "Person" includes any individual, firm, corporation, limited
39 liability company, trust, association, partnership, society, or any

1 other organization of individuals or any unit or agency of local,
2 state, or federal government.

3 (12) "Cooperative association" means any incorporated or
4 unincorporated association of producers which conforms to the
5 qualifications set out in the act of Congress of the United States,
6 Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large
7 388 as amended, known as the "Capper-Volstead Act" and which is engaged
8 in making collective sales or in marketing any agricultural commodity
9 or product thereof or in rendering service for or advancing the
10 interests of the producers of such commodity on a nonprofit cooperative
11 basis.

12 (13) "Member of a cooperative association" or "member" means any
13 producer of an agricultural commodity who markets his or her product
14 through such cooperative association and who is a voting stockholder of
15 or has a vote in the control of or is under a marketing agreement with
16 such cooperative association with respect to such product.

17 (14) "Affected handler" means any handler of an affected commodity.

18 (15) "Affected parties" means any producer, affected producer,
19 handler, or commodity commission board member.

20 (16) "Assessment" means the monetary amount established in a
21 marketing order that is to be paid by each affected producer to a
22 commission in accordance with the schedule established in the marketing
23 order.

24 (17) "Mail" or "send," for purposes of any notice relating to rule
25 making, referenda, or elections, means regular mail or electronic
26 distribution, as provided in RCW 34.05.260 for rule making.
27 "Electronic distribution" or "electronically" means distribution by
28 electronic mail or facsimile mail.

29 (18) "Handler" means any person who acts, either as principal,
30 agent, or otherwise, in the processing, selling, marketing, or
31 distributing of an agricultural commodity that is not produced by the
32 handler. "Handler" does not include a common carrier used to transport
33 an agricultural commodity. "To handle" means to act as a handler.

34 (19) "List of affected parties" means a list containing the names
35 and mailing addresses of affected parties. This list must contain the
36 names and addresses of all affected parties and, if requested by the
37 director, the amount, by unit, of the affected commodity produced
38 during a designated period under this chapter.

1 (20) "List of affected producers" means a list containing the names
2 and mailing addresses of affected producers. This list must contain
3 the names and addresses of all affected producers and, if requested by
4 the director, the amount, by unit, of the affected commodity produced
5 during a designated period under this chapter.

6 (21) "List of affected handlers" means a list containing the names
7 and addresses of affected handlers. This list must contain the names
8 and addresses of all affected handlers and, if requested by the
9 director, the amount, by unit, of the affected commodity handled during
10 a designated period under this chapter.

11 (22) "Percent by numbers" means the percent of those persons on the
12 list of affected parties or affected producers.

13 (23) "Referendum" means a vote by the affected parties or affected
14 producers which is conducted by secret ballot.

15 (24) "Rule-making proceedings" means rule making under chapter
16 34.05 RCW.

17 (25) "Vacancy" means that a board member leaves or is removed from
18 a board position prior to the end of a term, or a nomination process
19 for the beginning of a term concludes with no candidates for a
20 position.

21 (26) "Volume of production" means the percent of the average volume
22 of production of the affected commodity of those on the list of
23 affected parties or affected producers for a production period. For
24 the purposes of this chapter, a production period is a minimum three-
25 year period or as specified in the marketing order.

26 **Sec. 40.** RCW 15.66.030 and 2001 c 315 s 1 are each amended to read
27 as follows:

28 Marketing orders may be made for any one or more of the following
29 purposes:

30 (1) To establish plans and conduct programs for advertising and
31 sales promotion, to maintain present markets, or to create new or
32 larger markets for any agricultural commodity grown in the state of
33 Washington;

34 (2) To provide for carrying on research studies to find more
35 efficient methods of production, irrigation, processing,
36 transportation, handling, and marketing of any agricultural commodity;

1 (3) To provide for improving standards and grades by defining,
2 establishing, and providing labeling requirements with respect to the
3 same;

4 (4) To investigate and take necessary action to prevent unfair
5 trade practices;

6 (5) To provide information or communicate on matters pertaining to
7 the production, irrigation, processing, transportation, marketing, or
8 uses of an agricultural commodity produced in Washington state to any
9 elected official or officer or employee of any agency;

10 (6) To provide marketing information and services for producers of
11 an agricultural commodity;

12 (7) To provide information and services for meeting resource
13 conservation objectives of producers of an agricultural commodity;

14 (8) To engage in cooperative efforts in the domestic or foreign
15 marketing of food products of an agricultural commodity; and

16 (9) To provide for commodity-related education and training.

17 NEW SECTION. **Sec. 41.** A new section is added to chapter 15.66 RCW
18 to read as follows:

19 This chapter and the rules adopted under it are only one aspect of
20 the comprehensively regulated agricultural industry.

21 (1) Other laws applicable to agricultural commodities include the
22 following chapters and the rules adopted thereunder:

23 Chapter 15.08 RCW Horticultural pests and diseases;

24 Chapter 15.13 RCW Horticultural plants and facilities--Inspection
25 and licensing;

26 Chapter 15.14 RCW Planting stock;

27 Chapter 15.15 RCW Certified seed potatoes;

28 Chapter 15.17 RCW Standards of grades and packs;

29 Chapter 15.19 RCW Certification and inspection of ginseng;

30 Chapter 15.30 RCW Controlled atmosphere storage of fruits and
31 vegetables;

32 Chapter 15.49 RCW Seeds;

33 Chapter 15.53 RCW Commercial feed;

34 Chapter 15.54 RCW Fertilizers, minerals, and limes;

35 Chapter 15.58 RCW Washington pesticide control act;

36 Chapter 15.60 RCW Apiaries;

37 Chapter 15.64 RCW Farm marketing;

38 Chapter 15.83 RCW Agricultural marketing and fair practices;

1 Chapter 15.85 RCW Aquaculture marketing;
2 Chapter 15.86 RCW Organic food products;
3 Chapter 15.92 RCW Center for sustaining agriculture and natural
4 resources;
5 Chapter 17.24 RCW Insect pests and plant diseases;
6 Chapter 19.94 RCW Weights and measures;
7 Chapter 20.01 RCW Agricultural products--Commission merchants,
8 dealers, brokers, buyers, agents;
9 Chapter 22.09 RCW Agricultural commodities;
10 Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including
11 provisions of 21 C.F.R. relating to the general manufacturing
12 practices, food labeling, food standards, food additives, and pesticide
13 tolerances;
14 Chapter 69.07 RCW Washington food processing act;
15 Chapter 69.25 RCW Washington wholesome eggs and egg products act;
16 Chapter 69.28 RCW Honey;
17 7 U.S.C., chapter 6, Federal Insecticide, Fungicide, and
18 Rodenticide Act.
19 (2) In addition to the laws and regulations listed in subsection
20 (1) of this section that apply to the agricultural industry as a whole,
21 the potato industry is regulated by or must comply with the following
22 additional laws and the rules or regulations adopted thereunder:
23 (a) 7 C.F.R., Part 51, United States standards for grades of
24 potatoes;
25 (b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes
26 grown in Washington;
27 (c) 7 C.F.R., Part 1207, Potato research and promotion plan.
28 (3) In addition to the laws and regulations listed in subsection
29 (1) of this section that apply to the agricultural industry as a whole,
30 the wheat and barley industries are regulated by or must comply with
31 the following additional laws and the rules adopted thereunder:
32 (a) 7 U.S.C., chapter 38, Agricultural Marketing Act;
33 (b) Chapter 70.94 RCW, Washington clean air act, agricultural
34 burning.
35 (4) In addition to the laws and regulations listed in subsection
36 (1) of this section that apply to the agricultural industry as a whole,
37 the poultry industry is regulated by or must comply with the following
38 additional laws and the rules adopted thereunder:
39 (a) 21 U.S.C., chapter 10, Poultry and poultry products inspection;

- 1 (b) 21 U.S.C., chapter 9, Packers and stockyards;
- 2 (c) 7 U.S.C., chapter 38, Agricultural Marketing Act;
- 3 (d) Washington fryer commission labeling standards.

4 **Sec. 42.** RCW 15.66.050 and 1961 c 11 s 15.66.050 are each amended
5 to read as follows:

6 (1) Petitions for issuance, amendment or termination of a marketing
7 order shall be signed by not less than five percent or one hundred of
8 the producers alleged to be affected, whichever is less, and shall be
9 filed with the director. ((Such petition shall be accompanied by a
10 filing fee of one hundred dollars payable to the state treasurer; and
11 shall designate some person as attorney in fact for the purpose of this
12 section. Upon receipt of such a petition, the director shall prepare
13 a budget estimate for handling such petition which shall include the
14 cost of the preparation of the estimate, the cost of the hearings and
15 the cost of the proposed referendum. The petitioners, within thirty
16 days after receipt of the budget estimate by their attorney in fact
17 shall remit to the director the difference between the filing fee of
18 one hundred dollars already paid and the total budget estimate. If the
19 petitioners fail to remit the difference, or if for any other reason
20 the proceedings for the issuance, amendment or termination of the
21 marketing order are discontinued, the filing fee, including any
22 additional amount paid in accordance with such budget estimates shall
23 not be refunded. If the petition results, after proper proceedings, in
24 the issuance, amendment, or termination of a marketing order, said
25 petitioners shall be reimbursed for the amount paid for said total
26 filing fee out of funds of the commodity commission as they become
27 available.)) A petition for amendment or termination of a marketing
28 order may be submitted to the director by majority vote of a
29 commission's board.

30 (2) A commission shall reimburse the department for expenses
31 incurred by the department when a commodity commission petitions the
32 director to amend or terminate a marketing order and for other services
33 provided by the department under this chapter. The department shall
34 provide to a commodity commission an estimate of expenses that may be
35 incurred to amend or terminate a marketing order prior to any services
36 taking place.

37 (3) Petitioners who are not a majority of a commission, and who
38 file a petition with the director to issue, amend, or terminate a

1 marketing order, shall deposit funds with the director to pay for
2 expenses incurred by the department, under rules adopted by the
3 director.

4 (4) A commission shall reimburse petitioners the amount paid to the
5 department under the following circumstances:

6 (a) If the petition is to issue a marketing order, the commission
7 shall reimburse the petitioners the amount expended by the department
8 when funds become available after establishment of the commission; or

9 (b) If the petition is to amend or terminate a marketing order, the
10 commission shall reimburse the petitioners within thirty days of the
11 referendum if the proposal is assented to by the affected producers.

12 (5) If for any reason a proceeding is discontinued, the commission
13 or petitioners, whichever is applicable, shall reimburse the department
14 only for expenses incurred by the department up until the time the
15 proceeding is discontinued.

16 NEW SECTION. Sec. 43. A new section is added to chapter 15.66 RCW
17 to read as follows:

18 (1) All rule-making proceedings conducted under this chapter shall
19 be in accordance with chapter 34.05 RCW.

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

24 (3) The director may adopt amendments to marketing orders without
25 conducting a referendum if the amendments are adopted under the
26 following criteria:

27 (a) The proposed amendments relate only to internal administration
28 of a marketing order and are not subject to violation by a person;

29 (b) The proposed amendments adopt or incorporate by reference
30 without material change federal statutes or regulations, Washington
31 state statutes, or rules of other Washington state agencies, if the
32 material adopted or incorporated regulates the same activities as are
33 authorized under the marketing order;

34 (c) The proposed amendments only correct typographical errors, make
35 address or name changes, or clarify language of a rule without changing
36 the marketing order;

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

1 NEW SECTION. **Sec. 44.** A new section is added to chapter 15.66 RCW
2 to read as follows:

3 The director may adopt rules necessary to carry out the director's
4 duties and responsibilities under this chapter including:

5 (1) The issuance, amendment, suspension, or termination of
6 marketing orders;

7 (2) Procedural, technical, or administrative rules which may
8 address and include, but are not limited to:

9 (a) The submission of a petition to issue, amend, or terminate a
10 marketing order under this chapter;

11 (b) Nominations conducted under this chapter;

12 (c) Elections of board members or referenda conducted under this
13 chapter; and

14 (d) Actions of the director upon a petition to issue, amend, or
15 terminate a marketing order;

16 (3) Rules that provide for a method to fund:

17 (a) The costs of staff support for all commodity commissions if the
18 position is not directly funded by the legislature; and

19 (b) The actual costs related to the specific activity undertaken on
20 behalf of an individual commission.

21 **Sec. 45.** RCW 15.66.060 and 1975 1st ex.s. c 7 s 7 are each amended
22 to read as follows:

23 (1) Upon receipt of a petition for the issuance(~~(, amendment, or~~
24 ~~termination))~~ of a marketing order, the director shall establish a list
25 of ~~((producers))~~ affected parties of the agricultural commodity
26 affected ~~((or make any such existing list current))~~. In establishing
27 ~~((or making current such))~~ a list of ~~((producers))~~ affected parties and
28 their individual production, the director shall publish a notice to
29 producers of the commodity to be affected requiring them to file with
30 the director a report showing the producer's name, mailing address, and
31 the yearly average quantity of the affected commodity produced by him
32 or her in the three years preceding the date of the notice or in such
33 lesser time as the producer has produced the commodity in question.
34 ~~((Such))~~ Information as to production may also be accepted from other
35 valid sources if readily available. ~~((The notice shall be published~~
36 ~~once a week for four consecutive weeks in such newspaper or newspapers,~~
37 ~~including a newspaper or newspapers of general circulation within the~~
38 ~~affected areas, as the director may prescribe, and shall be mailed to~~

1 all affected producers on record with the director. All reports shall
2 be filed with the director within twenty days from the last date of
3 publication of the notice or within thirty days after the mailing of
4 the notice to affected producers, whichever is the later. The director
5 shall keep such lists at all times as current as possible and may
6 require information from affected producers at various times in
7 accordance with rules and regulations prescribed by the director:
8 PROVIDED, That any commission established under the provisions of this
9 chapter may at its discretion prior to any election for any purpose by
10 such commission carry out the above stated mandate to the director for
11 establishing a list of producers and their individual production, and
12 supply the director with a current list of all producers subject to the
13 provisions of the marketing order under which it was formed.

14 Such producer list shall be final and conclusive in making
15 determinations relative to the assent by producers upon the issuance,
16 amendment or termination of a marketing order and in elections under
17 the provisions of this chapter.

18 The director shall then notify affected producers, so listed, by
19 mail that the public hearing affording opportunity for them to be heard
20 upon the proposed issuance, amendment, or termination of the marketing
21 order will be heard at the time and place stated in the notice. Such
22 notice of the hearing shall be given not less than ten days nor more
23 than sixty days prior to the hearing.)) Notice of a proposed marketing
24 order issuance shall be as provided for in RCW 15.66.070.

25 (2) The director shall use the list of affected parties for the
26 purpose of notice, referendum proceedings, and electing or selecting
27 members of the commission's board in accordance with this chapter and
28 rules adopted under this chapter.

29 (3) An affected party may at any time file his or her name and
30 mailing address with the director. A list of affected parties may be
31 brought up-to-date by the director up to the day preceding a mailing of
32 a notice or ballot under this chapter and that list is deemed the list
33 of affected parties entitled to vote.

34 (4) The list of affected parties shall be kept in the rule-making
35 file by the director. The list shall be certified as a true
36 representation of the referendum mailing list. Inadvertent failure to
37 notify an affected party does not invalidate a proceeding conducted
38 under this chapter.

1 (5) The list of affected parties that is certified as the true
2 representation of the mailing list of a referendum shall be used to
3 determine assent as provided in this chapter.

4 (6) The director shall provide the commodity commission the list of
5 affected and interested parties once a marketing order is adopted and
6 a commodity commission is established as provided in this chapter.

7 **Sec. 46.** RCW 15.66.070 and 1961 c 11 s 15.66.070 are each amended
8 to read as follows:

9 (1) Notice of a public hearing to issue, amend, or terminate a
10 marketing order shall be published once a week for four consecutive
11 weeks in a newspaper or newspapers, including a newspaper or newspapers
12 of general circulation within the affected areas, as the director may
13 prescribe, and shall be mailed to all affected parties or affected
14 producers. The director shall mail notice to all affected parties or
15 affected producers, as applicable, who may be directly affected by the
16 proposal and whose names and addresses appear on the list compiled
17 under this chapter.

18 (2) At ((the)) a public hearing the director shall receive
19 ((evidence and)) testimony offered in support of, or opposition to, the
20 proposed issuance of, amendment to, or termination of a marketing order
21 and concerning the terms, conditions, scope, and area thereof. ((Such
22 hearing shall be public and all testimony shall be received under
23 oath.)) A full and complete record of all proceedings at such hearings
24 shall be made and maintained on file in the office of the director,
25 which file shall be open to public inspection. The director shall base
26 ((his)) any findings upon the testimony ((and evidence)) received at
27 the hearing, together with any other relevant facts available ((to
28 him)) from official publications of institutions of recognized
29 standing. The director shall describe in ((his)) the findings such
30 official publications upon which any finding is based.

31 ((For such hearings and for any other hearings under this
32 chapter,)) (3) The director shall have the power to subpoena witnesses
33 and to issue subpoenas for the production of any books, records, or
34 documents of any kind.

35 (4) The superior court of the county in which any hearing or
36 proceeding may be had may compel the attendance of witnesses and the
37 production of records, papers, books, accounts, documents and testimony
38 as required by such subpoena. The director, in case of the refusal of

1 any witness to attest or testify or produce any papers required by the
2 subpoena, shall report to the superior court of the county in which the
3 proceeding is pending by petition setting forth that due notice has
4 been given of the time and place of attendance of (~~said~~) the witness
5 or the production of (~~said~~) the papers and that the witness has been
6 summoned in the manner prescribed in this chapter and that he or she
7 has failed to attend or produce the papers required by the subpoena at
8 the hearing, cause or proceeding specified in the subpoena, or has
9 refused to answer questions propounded to him or her in the course of
10 such hearing, cause, or proceeding, and shall ask an order of the court
11 to compel a witness to appear and testify before the director. The
12 court upon such petition shall enter an order directing the witness to
13 appear before the court at a time and place to be fixed in such order
14 and then and there to show cause why he or she has not responded to the
15 subpoena. A copy of the order shall be served upon the witness. If it
16 appears to the court that the subpoena was regularly issued, it shall
17 enter an order that the witness appear at the time and place fixed in
18 the order and testify or produce the required papers, and on failing to
19 obey (~~said~~) the order the witness shall be dealt with as for contempt
20 of court.

21 **Sec. 47.** RCW 15.66.090 and 1975 1st ex.s. c 7 s 8 are each amended
22 to read as follows:

23 After the issuance by the director of the final decision approving
24 the issuance, amendment, or termination of a marketing order, the
25 director shall determine by a referendum whether the affected parties
26 or producers assent to the proposed action or not. The director shall
27 conduct the referendum among the affected parties or producers based on
28 the list as provided for in RCW 15.66.060, and 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 director, and if, of those
32 replying, sixty-five percent or more by number and fifty-one percent or
33 more by volume assent to the proposed order. The producers shall be
34 deemed to have assented to the proposed amendment order if sixty
35 percent or more by number and sixty percent or more by volume of those
36 replying assent to the proposed order. The determination by volume
37 shall be made on the basis of volume as determined in the list of
38 affected producers created under provisions of RCW 15.66.060, subject

1 to rules and regulations of the director for such determination. The
2 director shall consider the approval or disapproval of any cooperative
3 marketing association authorized by its producer members to act for
4 them in any such referendum, as being the approval or disapproval of
5 the producers who are members of or stockholders in or under contract
6 with such association of cooperative producers: PROVIDED, That the
7 association shall first determine that a majority of the membership of
8 the association authorize its action concerning the specific marketing
9 order. If the requisite assent is given, the director shall promulgate
10 the order and shall mail notices of the same to all affected producers.

11 NEW SECTION. **Sec. 48.** A new section is added to chapter 15.66 RCW
12 to read as follows:

13 The director may, upon the request of a commodity commission and
14 without compliance with RCW 15.66.070 through 15.66.090, suspend the
15 commission's order or term or provision thereof for a period of not to
16 exceed one year, if the director finds that the suspension will tend to
17 effectuate the declared policy of this chapter. Any suspension of all,
18 or substantially all, of a marketing order by the director is not
19 effective until the end of the then current marketing season.

20 NEW SECTION. **Sec. 49.** A new section is added to chapter 15.66 RCW
21 to read as follows:

22 The director is not required to hold a public hearing or a
23 referendum more than once in any twelve-month period on petitions to
24 issue, amend, or terminate a commission if any of the following
25 circumstances are present:

- 26 (1) The petition proposes to establish a marketing order for the
27 same commodity;
28 (2) The petition proposes the same or a similar amendment to a
29 marketing order; or
30 (3) The petition proposes to terminate the same marketing order.

31 NEW SECTION. **Sec. 50.** A new section is added to chapter 15.66 RCW
32 to read as follows:

33 (1) Pursuant to RCW 42.17.31907, certain agricultural business
34 records, commodity commission records, and department of agriculture
35 records relating to commodity commissions and producers of agricultural
36 commodities are exempt from public disclosure.

1 (2) Financial and commercial information and records submitted to
2 either the department or a commodity commission for the purpose of
3 administering this act or a marketing order may be shared between the
4 department and the applicable commodity commission. They may also be
5 used, if required, in any suit or administrative hearing involving any
6 provision of this chapter or a marketing order.

7 (3) This chapter does not prohibit:

8 (a) The issuance of general statements based upon the reports of a
9 number of persons subject to any marketing order as long as the
10 statements do not identify the information furnished by any person; or

11 (b) The publication by the director or a commodity commission of
12 the name of any person violating any marketing order and a statement of
13 the manner of the violation by that person.

14 **Sec. 51.** RCW 15.66.110 and 2001 c 315 s 2 are each amended to read
15 as follows:

16 (1) Every marketing order shall establish a commodity commission
17 composed of not less than five nor more than thirteen members. In
18 addition, the director shall be an ex officio member of each commodity
19 commission unless otherwise specified in the marketing order.
20 Commission board members shall be citizens and residents of this state
21 if required by the marketing order, and over the age of eighteen. Not
22 more than one board member may be part of the same "person" as defined
23 by this chapter. The term of office of commission members shall be
24 three years with the terms rotating so that one-third of the terms will
25 commence as nearly as practicable each year. However, the first
26 commission shall be selected, one-third for a term of one year, one-
27 third for a term of two years, and one-third for a term of three years,
28 as nearly as practicable. Except as provided in subsection (2) of this
29 section, no less than two-thirds of the commission board members shall
30 be elected by the affected producers and such elected members shall all
31 be affected producers. The remaining members shall be appointed by the
32 commission and shall be either affected producers, others active in
33 matters relating to the affected commodity, or persons not so related.

34 (2) A marketing order may provide that a majority of the
35 commission's board be appointed by the director, but in any event, no
36 less than one-third of the board members shall be elected by the
37 affected producers.

1 (3) In the event that the marketing order provides that a majority
2 of the commission's board be appointed by the director, the marketing
3 order shall incorporate either the provisions of section 52 or 53 of
4 this act for board member selection.

5 NEW SECTION. Sec. 52. A new section is added to chapter 15.66 RCW
6 to read as follows:

7 (1) This section or section 53 of this act applies when the
8 director appoints a majority of the board positions as set forth under
9 RCW 15.66.110(3).

10 (2) Candidates for director-appointed board positions on a
11 commission shall be nominated under RCW 15.66.120(1).

12 (3) Not less than sixty days nor more than seventy-five days prior
13 to the commencement of a board member term, the director shall cause an
14 advisory vote to be held for the director-appointed positions.
15 Advisory ballots shall be mailed to all affected producers and shall be
16 returned to the director not less than thirty days prior to the
17 commencement of the term. The advisory ballot shall be conducted in a
18 manner so that it is a secret ballot. The names of the two candidates
19 receiving the most votes in the advisory vote shall be forwarded to the
20 director for potential appointment to the commission board. In the
21 event there are only two candidates nominated for a board position, an
22 advisory vote may not be held and the candidates' names shall be
23 forwarded to the director for potential appointment.

24 (4) The candidates whose names are forwarded to the director for
25 potential appointment shall submit to the director a letter stating why
26 he or she wishes to be appointed to the commission board. The director
27 may select either person for the position.

28 NEW SECTION. Sec. 53. A new section is added to chapter 15.66 RCW
29 to read as follows:

30 (1) This section or section 52 of this act applies when the
31 director appoints a majority of the board positions as set forth under
32 RCW 15.66.110(3).

33 (2) Candidates for director-appointed board positions on a
34 commission shall be nominated under RCW 15.66.120(1).

35 (3) Not less than sixty days nor more than seventy-five days prior
36 to the commencement of a board member term, the director shall cause an
37 advisory vote to be held for the director-appointed positions.

1 Advisory ballots shall be mailed to all affected producers and shall be
2 returned to the director not less than thirty days prior to the
3 commencement of the term. The advisory ballot shall be conducted in a
4 manner so that it is a secret ballot. The name of the candidate
5 receiving the most votes in the advisory vote shall be forwarded to the
6 director for appointment to the commission board.

7 (4) The director shall appoint the candidate receiving the most
8 votes in an advisory ballot unless the candidate fails to meet the
9 qualifications of commission board members under this chapter and the
10 marketing order. In the event the director rejects the candidate
11 receiving the most votes, the position is vacant and shall be filled
12 under RCW 15.66.120(8).

13 **Sec. 54.** RCW 15.66.120 and 1975 1st ex.s. c 7 s 9 are each amended
14 to read as follows:

15 (1) Not less than ninety days nor more than one hundred and five
16 days prior to the beginning of each term of each elected commission
17 member, ~~((the director shall give))~~ notice ~~((by mail))~~ shall be mailed
18 to all affected producers ~~((of the vacancy and))~~ with a call for
19 nominations in accordance with this section and ~~((with the))~~ provisions
20 of the marketing order ~~((and shall give)).~~ The notice ((of)) shall
21 give the final date for filing nominations, which shall not be less
22 than eighty days nor more than eighty-five days before the beginning of
23 such term. ~~((Such))~~ The notice shall also advise that nominating
24 petitions shall be signed by five persons qualified to vote for such
25 candidates or, if the number of nominating signers is provided for in
26 the marketing order, ~~((such))~~ then the number ((as such)) provided in
27 the marketing order ((provides)).

28 (2) Not less than sixty days nor more than seventy-five days prior
29 to the commencement of ~~((such))~~ a commission board member term, the
30 director shall ~~((submit by))~~ mail ballots to all affected producers~~((~~
31 ~~which))~~. Ballots shall be required to be returned to the director not
32 less than thirty days prior to the commencement of ((such)) the term.
33 ~~((Such))~~ The mail ballot shall be conducted in a manner so that it
34 shall be a secret ballot. With respect to the first commission for a
35 particular commodity, the director may call for nominations for board
36 members in the notice of ~~((his))~~ the director's decision following the
37 hearing and the ballot may be submitted at the time the director's
38 proposed order is submitted to the affected producers for their assent.

1 (~~Said elected~~) (3) Board members may be elected or appointed from
2 various districts within the area covered by the marketing order if the
3 order so provides, with the number of members from each district to be
4 in accordance with the provisions of the marketing order.

5 (4) The board members of the commission not elected by the affected
6 producers shall be elected by a majority of the commission's board at
7 a meeting of the commission within ninety days prior to expiration of
8 the term (~~but to fill nonelective vacancies caused by other reasons~~
9 than the expiration of a term, the new member shall be elected by the
10 commission at its first meeting after the occurrence of the vacancy)),
11 or appointed by the director under this chapter and the marketing
12 order.

13 (5) When only one nominee is nominated for any position on the
14 commission, the director shall (~~deem that said nominee satisfies the~~
15 requirements of the position and then it shall be deemed that said
16 nominee has been duly)) determine whether the nominee meets the
17 qualifications of the position and, if so, the director shall declare
18 the nominee elected or appoint the nominee to the position.

19 (6) In the event of a vacancy in an elected board member position
20 on a commodity commission, the remaining board members shall select a
21 qualified person to fill the vacant position for the remainder of the
22 current term or as provided in the marketing order.

23 (7) In the event of a vacancy in an appointed board member position
24 on a commodity commission, the appointment of board members shall be as
25 specified in the marketing order.

26 (8) In the event of a vacancy in a director-appointed board member
27 position on a commodity commission, the remaining board members shall
28 recommend to the director a qualified person for appointment to the
29 vacant position. The director shall appoint the person recommended by
30 the board unless the person fails to meet the qualifications of
31 commission board members under this chapter and the marketing order.

32 NEW SECTION. Sec. 55. A new section is added to chapter 15.66 RCW
33 to read as follows:

34 (1) Upon completion of any vote, referendum, or nomination and
35 elections, the department shall tally the results of the vote and
36 provide the results to affected parties.

37 (2) If an affected party disputes the results of a vote, that
38 affected party, within sixty days from the announced results, shall

1 provide in writing a statement of why the vote is disputed and request
2 a recount.

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

6 **Sec. 56.** RCW 15.66.130 and 2001 2nd sp.s. c 6 s 2 are each amended
7 to read as follows:

8 Each commodity commission shall hold such regular meetings as the
9 marketing order may prescribe or that the commission by resolution may
10 prescribe, together with such special meetings that may be called in
11 accordance with provisions of its resolutions upon reasonable notice to
12 all members thereof. A majority of the voting members shall constitute
13 a quorum for the transaction of all business of the commission. (~~In
14 the event of a vacancy in an elected or appointed position on the
15 commission, the remaining elected members of the commission shall
16 select a qualified person to fill the unexpired term.~~)

17 Each member of the commission shall be compensated in accordance
18 with RCW 43.03.230. Members and employees of the commission may be
19 reimbursed for actual travel expenses incurred in carrying out the
20 provisions of this chapter, as defined under the commodity board's
21 marketing order. Otherwise, if not defined or referenced in the
22 marketing order, reimbursement for travel expenses shall be in
23 accordance with RCW 43.03.050 and 43.03.060.

24 **Sec. 57.** RCW 15.66.140 and 2001 c 315 s 3 are each amended to read
25 as follows:

26 Every marketing commission shall have such powers and duties in
27 accordance with provisions of this chapter as may be provided in the
28 marketing order and shall have the following powers and duties:

29 (1) To elect a chairman and such other officers as determined
30 advisable;

31 (2) To adopt, rescind and amend rules and regulations reasonably
32 necessary for the administration and operation of the commission and
33 the enforcement of its duties under the marketing order;

34 (3) To administer, enforce, direct and control the provisions of
35 the marketing order and of this chapter relating thereto;

36 (4) To employ and discharge at its discretion such administrators
37 and additional personnel, attorneys, advertising and research agencies

1 and other persons and firms that it may deem appropriate and pay
2 compensation to the same;

3 (5) To acquire personal property and purchase or lease office space
4 and other necessary real property and transfer and convey the same;

5 (6) To institute and maintain in its own name any and all legal
6 actions, including actions by injunction, mandatory injunction or civil
7 recovery, or proceedings before administrative tribunals or other
8 governmental authorities necessary to carry out the provisions of this
9 chapter and of the marketing order;

10 (7) To keep accurate records of all its receipts and disbursements,
11 which records shall be open to inspection and audit by the state
12 auditor or private auditor designated by the state auditor at least
13 every five years;

14 (8) Borrow money and incur indebtedness;

15 (9) Make necessary disbursements for routine operating expenses;

16 (10) To expend funds for commodity-related education, training, and
17 leadership programs as each commission deems expedient;

18 (11) To work cooperatively with other local, state, and federal
19 agencies; universities; and national organizations for the purposes
20 provided in the commission's marketing order;

21 (12) To enter into contracts or interagency agreements with any
22 private or public agency, whether federal, state, or local, to carry
23 out the purposes provided in the commission's marketing order.
24 Personal service contracts must comply with chapter 39.29 RCW;

25 (13) To accept and expend or retain any gifts, bequests,
26 contributions, or grants from private persons or private and public
27 agencies to carry out the purposes provided in the commission's
28 marketing order;

29 (14) To enter into contracts or agreements for research in the
30 production, irrigation, processing, transportation, marketing, use, or
31 distribution of an affected commodity;

32 (15) To retain in emergent situations the services of private legal
33 counsel to conduct legal actions on behalf of a commission. The
34 retention of a private attorney is subject to review by the office of
35 the attorney general;

36 (16) To engage in appropriate fund-raising activities for the
37 purpose of supporting activities of the commission authorized by the
38 marketing order;

1 (17) To participate in international, federal, state, and local
2 hearings, meetings, and other proceedings relating to the production,
3 irrigation, manufacture, regulation, transportation, distribution,
4 sale, or use of affected commodities including activities authorized
5 under RCW 42.17.190, including the reporting of those activities to the
6 public disclosure commission; ((and))

7 (18) To maintain a list of the names and addresses of affected
8 producers that may be compiled from information used to collect
9 assessments under the provisions of the marketing order and data on the
10 value of each producer's production for a minimum three-year period;

11 (19) To maintain a list of the names and addresses of persons who
12 handle the affected commodity within the affected area and data on the
13 amount and value of the commodity handled for a minimum three-year
14 period by each person; and

15 (20) Such other powers and duties that are necessary to carry out
16 the purposes of this chapter.

17 NEW SECTION. Sec. 58. A new section is added to chapter 15.66 RCW
18 to read as follows:

19 (1) Each commodity commission shall prepare a list of all affected
20 producers from any information available from the department,
21 producers, producer associations, organizations, or handlers of the
22 affected commodity. This list shall contain the names and addresses of
23 all affected persons who produce the affected commodity and the amount,
24 by unit, of the affected commodity produced during at least the past
25 three years.

26 (2) Each commodity commission shall prepare a list of all persons
27 who handle the affected commodity and the amount of the commodity
28 handled by each person during at least the past three years.

29 (3) It is the responsibility of all affected parties to ensure that
30 their correct address is filed with the commodity commission. It is
31 also the responsibility of affected parties to submit production data
32 and handling data to the commission as prescribed by the commission's
33 marketing order.

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

1 (5) At the director's request, the commodity commission shall
2 provide the director a certified list of affected producers or affected
3 handlers from the commodity commission records. The list shall contain
4 all information required by the director to conduct a referendum or
5 board member elections under this chapter.

6 (6) For all purposes of giving notice and holding referenda on
7 amendment or termination proposals, and for giving notice and electing
8 or selecting members of a commission, the applicable list corrected up
9 to the day preceding the date the list is certified by the commission
10 and mailed to the director is deemed to be the list of all affected
11 producers or affected handlers, as applicable, entitled to notice or to
12 vote. Inadvertent failure to notify an affected producer or handler
13 does not invalidate a proceeding conducted under this chapter.

14 NEW SECTION. Sec. 59. A new section is added to chapter 15.66 RCW
15 to read as follows:

16 Agricultural commodity commissions shall adopt rules governing
17 promotional hosting expenditures by commodity commission employees,
18 agents, or board members under RCW 15.04.200.

19 NEW SECTION. Sec. 60. A new section is added to chapter 15.66 RCW
20 to read as follows:

21 If after complying with the procedures outlined in this chapter and
22 a referendum proposal to terminate a commodity commission is assented
23 to, the affected commodity commission shall:

24 (1) Document the details of all measures undertaken to terminate
25 the commodity commission and identify and document all closing costs;

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

29 (3) Provide for the reimbursement to affected producers of moneys
30 collected by assessment. Reimbursement shall be made to those
31 considered affected producers over the previous three-year time frame
32 on a pro rata basis and at a percent commensurate with their volume of
33 production over the previous three-year period unless a different time
34 period is specified in the marketing order. If the commodity
35 commission finds that the amounts of moneys are so small as to make
36 impractical the computation and remitting of the pro rata refund, the

1 moneys shall be paid into the state treasury as unclaimed trust moneys;
2 and

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

5 **Sec. 61.** RCW 15.66.180 and 1961 c 11 s 15.66.180 are each amended
6 to read as follows:

7 All moneys which are collected or otherwise received pursuant to
8 each marketing order created under this chapter shall be used solely by
9 and for the commodity commission concerned and shall not be used for
10 any other commission, nor the department except as otherwise provided
11 in this chapter. Such moneys shall be deposited in a separate account
12 or accounts in the name of the individual commission in any bank which
13 is a state depository. All expenses and disbursements incurred and
14 made pursuant to the provisions of any marketing order shall be paid
15 from moneys collected and received pursuant to such order without the
16 necessity of a specific legislative appropriation and all moneys
17 deposited for the account of any order shall be paid from said account
18 by check or voucher in such form and in such manner and upon the
19 signature of such person as may be prescribed by the commission. None
20 of the provisions of RCW 43.01.050 shall be applicable to any such
21 account or any moneys so received, collected or expended.

22 **Sec. 62.** RCW 15.66.185 and 1967 ex.s. c 54 s 2 are each amended to
23 read as follows:

24 Any funds of any agricultural commodity commission may be invested
25 in savings or time deposits in banks, trust companies, and mutual
26 savings banks (~~(which)~~) that are doing business in (~~(this state)~~) the
27 United States, up to the amount of insurance afforded such accounts by
28 the Federal Deposit Insurance Corporation. This section shall apply to
29 all funds which may be lawfully so invested, which in the judgment of
30 any agricultural commodity commission are not required for immediate
31 expenditure. The authority granted by this section is not exclusive
32 and shall be construed to be cumulative and in addition to other
33 authority provided by law for the investment of such funds.

34 **Sec. 63.** RCW 15.66.245 and 1988 c 54 s 2 are each amended to read
35 as follows:

1 Any marketing agreement or order may authorize the members of a
2 commodity commission, or their agents or designees, to participate in
3 federal or state hearings or other proceedings concerning regulation of
4 the manufacture, distribution, sale, or use of any pesticide as defined
5 by RCW 15.58.030(~~(+1)~~) (30) or any agricultural chemical which is of
6 use or potential use in producing the affected commodity. Any
7 marketing agreement or order may authorize the expenditure of commodity
8 commission funds for this purpose.

9 **Sec. 64.** RCW 15.66.260 and 1969 c 66 s 2 are each amended to read
10 as follows:

11 ~~((All general administrative expenses of the director in carrying
12 out the provisions of this chapter shall be borne by the state:
13 PROVIDED, That))~~ The department shall be reimbursed for actual costs
14 incurred in conducting nominations and elections for members of any
15 commodity board established under the provisions of this chapter. Such
16 reimbursement shall be made from the funds of the commission for which
17 the nominations and elections were conducted by the director.

18 NEW SECTION. **Sec. 65.** RCW 15.66.020 (Declaration of purpose) and
19 1961 c 11 s 15.66.020 are each repealed.

20 **Sec. 66.** RCW 42.17.31907 and 2001 c 314 s 18 are each amended to
21 read as follows:

22 The following agricultural business records and commodity
23 commission records are exempt from the disclosure requirements of this
24 chapter:

25 (1) Production or sales records required to determine assessment
26 levels and actual assessment payments to commodity commissions formed
27 under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88,
28 15.100, and 16.67 RCW or required by the department of agriculture
29 ~~((under RCW 15.13.310(4) or 15.49.370(6)))~~ to administer these chapters
30 or the department's programs;

31 (2) Consignment information contained on phytosanitary certificates
32 issued by the department of agriculture under chapters 15.13, 15.49,
33 and 15.17 RCW or federal phytosanitary certificates issued under 7
34 C.F.R. 353 through cooperative agreements with the animal and plant
35 health inspection service, United States department of agriculture, or

1 on applications for phytosanitary certification required by the
2 department of agriculture; and

3 (3) Financial and commercial information and records supplied by
4 persons ~~((to))~~ (a) to the department of agriculture for the purpose of
5 conducting a referendum for the potential establishment of a commodity
6 commission; (b) to the department of agriculture or commodity
7 commissions formed under chapter~~((s))~~ 15.24, 15.28, 15.44, 15.65,
8 15.66, 15.74, 15.88, 15.100, ~~((and))~~ or 16.67 RCW with respect to
9 domestic or export marketing activities or individual producer's
10 production information.

11 NEW SECTION. Sec. 67. A new section is added to chapter 15.26 RCW
12 to read as follows:

13 (1) Under RCW 42.17.31907, certain agricultural business records,
14 commission records, and department of agriculture records relating to
15 the commission and producers of agricultural commodities are exempt
16 from public disclosure.

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

23 (3) This chapter does not prohibit:

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

27 (b) The publication by the director or the commission of the name
28 of any person violating this chapter and a statement of the manner of
29 the violation by that person.

30 NEW SECTION. Sec. 68. A new section is added to chapter 15.28 RCW
31 to read as follows:

32 (1) Under RCW 42.17.31907, certain agricultural business records,
33 commission records, and department of agriculture records relating to
34 the commission and producers of agricultural commodities are exempt
35 from public disclosure.

36 (2) Financial and commercial information and records submitted to
37 either the department or the commission for the purpose of

1 administering this chapter may be shared between the department and the
2 commission. They may also be used, if required, in any suit or
3 administrative hearing involving any provision of this chapter or a
4 marketing order.

5 (3) This chapter does not prohibit:

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

9 (b) The publication by the director or the commission of the name
10 of any person violating this chapter and a statement of the manner of
11 the violation by that person.

12 NEW SECTION. Sec. 69. A new section is added to chapter 15.44 RCW
13 to read as follows:

14 (1) Under RCW 42.17.31907, certain agricultural business records,
15 commission records, and department of agriculture records relating to
16 the commission and producers of agricultural commodities are exempt
17 from public disclosure.

18 (2) Financial and commercial information and records submitted to
19 either the department or the commission for the purpose of
20 administering this chapter may be shared between the department and the
21 commission. They may also be used, if required, in any suit or
22 administrative hearing involving any provision of this chapter or a
23 marketing order.

24 (3) This chapter does not prohibit:

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

28 (b) The publication by the director or the commission of the name
29 of any person violating this chapter and a statement of the manner of
30 the violation by that person.

31 NEW SECTION. Sec. 70. A new section is added to chapter 15.88 RCW
32 to read as follows:

33 (1) Under RCW 42.17.31907, certain agricultural business records,
34 commission records, and department of agriculture records relating to
35 the commission and producers of agricultural commodities are exempt
36 from public disclosure.

1 (2) Financial and commercial information and records submitted to
2 either the department or the commission for the purpose of
3 administering this chapter may be shared between the department and the
4 commission. They may also be used, if required, in any suit or
5 administrative hearing involving any provision of this chapter or a
6 marketing order.

7 (3) This chapter does not prohibit:

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

11 (b) The publication by the director or the commission of the name
12 of any person violating this chapter and a statement of the manner of
13 the violation by that person.

14 NEW SECTION. Sec. 71. A new section is added to chapter 16.67 RCW
15 to read as follows:

16 (1) Under RCW 42.17.31907, certain agricultural business records,
17 commission records, and department of agriculture records relating to
18 the commission and producers of agricultural commodities are exempt
19 from public disclosure.

20 (2) Financial and commercial information and records submitted to
21 either the department or the commission for the purpose of
22 administering this chapter may be shared between the department and the
23 commission. They may also be used, if required, in any suit or
24 administrative hearing involving any provision of this chapter or a
25 marketing order.

26 (3) This chapter does not prohibit:

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

30 (b) The publication by the director or the commission of the name
31 of any person violating this chapter and a statement of the manner of
32 the violation by that person.

33 NEW SECTION. Sec. 72. A new section is added to chapter 15.24 RCW
34 to read as follows:

35 The director may provide by rule for a method to fund staff support
36 for all commodity commissions if a position is not directly funded by
37 the legislature and costs related to the specific activity undertaken

1 on behalf of an individual commission. The commission shall provide
2 funds to the department according to the rules adopted by the director.

3 NEW SECTION. **Sec. 73.** A new section is added to chapter 15.26 RCW
4 to read as follows:

5 The director may provide by rule for a method to fund staff support
6 for all commodity commissions if a position is not directly funded by
7 the legislature and costs related to the specific activity undertaken
8 on behalf of an individual commission. The commission shall provide
9 funds to the department according to the rules adopted by the director.

10 NEW SECTION. **Sec. 74.** A new section is added to chapter 15.28 RCW
11 to read as follows:

12 The director may provide by rule for a method to fund staff support
13 for all commodity commissions if a position is not directly funded by
14 the legislature and costs related to the specific activity undertaken
15 on behalf of an individual commission. The commission shall provide
16 funds to the department according to the rules adopted by the director.

17 NEW SECTION. **Sec. 75.** A new section is added to chapter 15.44 RCW
18 to read as follows:

19 The director may provide by rule for a method to fund staff support
20 for all commodity commissions if a position is not directly funded by
21 the legislature and costs related to the specific activity undertaken
22 on behalf of an individual commission. The commission shall provide
23 funds to the department according to the rules adopted by the director.

24 NEW SECTION. **Sec. 76.** A new section is added to chapter 15.88 RCW
25 to read as follows:

26 The director may provide by rule for a method to fund staff support
27 for all commodity commissions if a position is not directly funded by
28 the legislature and costs related to the specific activity undertaken
29 on behalf of an individual commission. The commission shall provide
30 funds to the department according to the rules adopted by the director.

31 NEW SECTION. **Sec. 77.** A new section is added to chapter 16.67 RCW
32 to read as follows:

33 The director may provide by rule for a method to fund staff support
34 for all commodity commissions if a position is not directly funded by

1 the legislature and costs related to the specific activity undertaken
2 on behalf of an individual commission. The commission shall provide
3 funds to the department according to the rules adopted by the director.

4 NEW SECTION. **Sec. 78.** A new section is added to chapter 43.23 RCW
5 to read as follows:

6 (1) The director may provide by rule for a method to fund staff
7 support for all commodity commissions if a position is not directly
8 funded by the legislature.

9 (2) Staff support funded under sections 7(1)(c), 44(3), and 72
10 through 77 of this act shall be limited to one-half full-time
11 equivalent employee for all commodity commissions.

12 NEW SECTION. **Sec. 79.** A new section is added to chapter 16.67 RCW
13 to read as follows:

14 The history, economy, culture, and the future of Washington state's
15 agriculture involves the beef industry. In order to develop and
16 promote beef and beef products as part of an existing comprehensive
17 scheme to regulate those products the legislature declares:

18 (1) That the Washington state beef commission is created;

19 (2) That it is vital to the continued economic well-being of the
20 citizens of this state and their general welfare that its beef and beef
21 products be properly promoted by (a) enabling the beef industry to help
22 themselves in establishing orderly, fair, sound, efficient, and
23 unhampered marketing, grading, and standardizing of beef and beef
24 products they produce; and (b) working to stabilize the beef industry
25 by increasing consumption of beef and beef products within the state,
26 the nation, and internationally;

27 (3) That beef producers operate within a regulatory environment
28 that imposes burdens on them for the benefit of society and the
29 citizens of the state and includes restrictions on marketing autonomy.
30 Those restrictions may impair the beef producer's ability to compete in
31 local, domestic, and foreign markets;

32 (4) That it is in the overriding public interest that support for
33 the beef industry be clearly expressed, that adequate protection be
34 given to agricultural commodities, uses, activities, and operations,
35 and that beef and beef products be promoted individually, and as part
36 of a comprehensive industry to:

1 (a) Enhance the reputation of Washington state's agriculture
2 industry;

3 (b) Increase the sale and use of beef products in local, domestic,
4 and foreign markets;

5 (c) Protect the public by educating the public in reference to the
6 quality, care, and methods used in the production of beef and beef
7 products, and in reference to the various cuts and grades of beef and
8 the uses to which each should be put;

9 (d) Increase the knowledge of the health-giving qualities and
10 dietetic value of beef products; and

11 (e) Support and engage in programs or activities that benefit the
12 production, handling, processing, marketing, and uses of beef and beef
13 products;

14 (5) That this chapter is enacted in the exercise of the police
15 powers of this state for the purpose of protecting the health, peace,
16 safety, and general welfare of the people of this state; and

17 (6) That the beef industry is a highly regulated industry and that
18 this chapter and the rules adopted under it are only one aspect of the
19 regulated industry. Other regulations and restraints applicable to the
20 beef industry include the:

21 (a) Beef Promotion and Research Act of 1985, U.S.C. Title 7,
22 Chapter 62;

23 (b) Beef promotion and research, 7 C.F.R., Part 1260;

24 (c) Agricultural Marketing Act, U.S.C. Title 7;

25 (d) USDA meat grading, certification, and standards, 7 C.F.R., Part
26 54;

27 (e) Mandatory price reporting, 7 C.F.R., Part 57;

28 (f) Grazing permits, 43 C.F.R., Part 2920;

29 (g) Capper-Volstead Act, U.S.C. Title 7, Chapters 291 and 292;

30 (h) Livestock identification under chapter 16.57 RCW and rules;

31 (i) Organic food products act under chapter 15.86 RCW and rules;

32 (j) Intrastate commerce in food, drugs, and cosmetics act under
33 chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating
34 to the general manufacturing practices, food labeling, food standards,
35 food additives, and pesticide tolerances;

36 (k) Washington food processing act under chapter 69.07 RCW and
37 rules;

38 (l) Washington food storage warehouses act under chapter 69.10 RCW
39 and rules;

- 1 (m) Animal health under chapter 16.36 RCW and rules; and
2 (n) Weights and measures under chapter 19.94 RCW and rules.

3 **Sec. 80.** RCW 16.67.030 and 1999 c 291 s 30 are each amended to
4 read as follows:

5 For the purpose of this chapter:

6 (1) "Commission" means the Washington state beef commission.

7 (2) "Director" means the director of agriculture of the state of
8 Washington or (~~his duty~~) an appointed representative.

9 (3) "Ex officio members" means those advisory members of the
10 commission who do not have a vote.

11 (4) "Department" means the department of agriculture of the state
12 of Washington.

13 (5) "Person" includes any individual, firm, corporation, trust,
14 association, partnership, society, or any other organization of
15 individuals.

16 (6) "Beef producer" means any person who raises, breeds, grows, or
17 purchases cattle or calves for beef production.

18 (7) "Dairy (beef) producer" means any person who raises, breeds,
19 grows, or purchases cattle for dairy production and who is actively
20 engaged in the production of fluid milk.

21 (8) "Feeder" means any person actively engaged in the business of
22 feeding cattle and usually operating a feed lot.

23 (9) "Producer" means any person actively engaged in the cattle
24 industry including beef producers and dairy (beef) producers.

25 (10) "Washington cattle" shall mean all cattle owned or controlled
26 by affected producers and located or sold in the state of Washington.

27 (11) "Meat packer" means any person operating a slaughtering
28 establishment subject to inspection under a federal meat inspection
29 act.

30 (12) "Livestock salesyard operator" means any person licensed to
31 operate a cattle auction market or salesyard under the provisions of
32 chapter 16.65 RCW as enacted or hereafter amended.

33 (13) "Mail" or "send" for purposes of any notice relating to rule
34 making means regular mail or electronic distribution, as provided in
35 RCW 34.05.260 for rule making. "Electronic distribution" or
36 "electronically" means distribution by electronic mail or facsimile
37 mail.

1 **Sec. 81.** RCW 16.67.070 and 1991 c 9 s 4 are each amended to read
2 as follows:

3 (1) In the event a position on the commission becomes vacant due to
4 resignation, disqualification, death, or for any other reason, the
5 unexpired term of such position shall be filled by the director
6 forthwith.

7 (2) Each member of the commission shall be compensated in
8 accordance with RCW 43.03.230 (~~and~~).

9 (3) Each member or employee shall be reimbursed for actual travel
10 expenses ((in accordance with)) incurred in carrying out the provisions
11 of this chapter as defined by the commission in rule. Otherwise if not
12 defined in rule, reimbursement for travel expenses shall be at the
13 rates allowed by RCW 43.03.050 and 43.03.060.

14 **Sec. 82.** RCW 16.67.090 and 2000 c 146 s 2 are each amended to read
15 as follows:

16 The powers and duties of the commission shall include the
17 following:

18 (1) To administer and enforce the provisions of this chapter, and
19 do all things reasonably necessary to effectuate the purposes of this
20 chapter;

21 (2) To elect a chairman and such other officers as it deems
22 advisable;

23 (3) To employ and discharge at its discretion a manager, secretary,
24 and such other personnel, including attorneys engaged in the private
25 practice of law subject to the (~~approval and supervision~~) review of
26 the attorney general, as the commission determines are necessary and
27 proper to carry out the purposes of this chapter, and to prescribe
28 their duties and powers and fix their compensation;

29 (4) To adopt, rescind, and amend rules, regulations, and orders for
30 the exercise of its powers hereunder subject to the provisions of
31 chapter 34.05 RCW (~~(Administrative Procedure Act) as now or hereafter~~
32 ~~amended~~), except that rule-making proceedings conducted under this
33 chapter are exempt from compliance with RCW 34.05.310, the provisions
34 of chapter 19.85 RCW, the regulatory fairness act, and the provisions
35 of RCW 43.135.055 when adoption of the rule is determined by a
36 referendum vote of the affected parties;

1 (5) To establish by resolution, a headquarters which shall continue
2 as such unless and until so changed by the commission. All records,
3 books and minutes of the commission shall be kept at such headquarters;

4 (6) To require a bond of all commission members and employees of
5 the commission in a position of trust in the amount the commission
6 shall deem necessary. The premium for such bond or bonds shall be paid
7 by the commission from assessments collected. Such bond shall not be
8 necessary if any such commission member or employee is covered by any
9 blanket bond covering officials or employees of the state of
10 Washington;

11 (7) To establish a beef commission revolving fund, such fund to be
12 deposited in a bank or banks or financial institution or institutions,
13 approved for the deposit of state funds, in which all money received by
14 the commission, except an amount of petty cash for each day's needs not
15 to exceed one hundred dollars, shall be deposited each day or as often
16 during the day as advisable; none of the provisions of RCW 43.01.050 as
17 now or hereafter amended shall apply to money collected under this
18 chapter;

19 (8) To prepare a budget or budgets covering anticipated income and
20 expenses to be incurred in carrying out the provisions of this chapter
21 during each fiscal year;

22 (9) To incur expense and enter into contracts and to create such
23 liabilities as may be reasonable for the proper administration and
24 enforcement of this chapter;

25 (10) To borrow money, not in excess of its estimate of its revenue
26 from the current year's contributions;

27 (11) To keep or cause to be kept in accordance with accepted
28 standards of good accounting practice, accurate records of all
29 assessments, expenditures, moneys and other financial transactions made
30 and done pursuant to this chapter. Such records, books and accounts
31 shall be audited at least every five years subject to procedures and
32 methods lawfully prescribed by the state auditor. Such books and
33 accounts shall be closed as of the last day of each fiscal year. A
34 copy of such audit shall be delivered within thirty days after
35 completion thereof to the director, the state auditor and the
36 commission. On such years and in such event the state auditor is
37 unable to audit the records, books and accounts within six months
38 following the close of the audit period it shall be mandatory that the
39 commission employ a private auditor to make such audit;

1 (12) To sue and be sued as a commission, without individual
2 liability for acts of the commission within the scope of the powers
3 conferred upon it by this chapter;

4 (13) To cooperate with any other local, state, or national
5 commission, organization or agency, whether voluntary or established by
6 state or federal law, including recognized livestock groups, engaged in
7 work or activities similar to the work and activities of the commission
8 created by this chapter and make contracts and agreements with such
9 organizations or agencies for carrying on joint programs beneficial to
10 the beef industry;

11 (14) To accept grants, donations, contributions or gifts from any
12 governmental agency or private source for expenditures for any purpose
13 consistent with the provisions of this chapter; and

14 (15) To operate jointly with beef commissions or similar agencies
15 established by state laws in adjoining states.

16 **Sec. 83.** RCW 16.67.120 and 2000 c 146 s 5 are each amended to read
17 as follows:

18 (1) There is hereby levied an assessment of (~~(fifty cents)~~) one
19 dollar per head on all Washington cattle sold in this state or
20 elsewhere to be paid by the seller at the time of sale: PROVIDED, That
21 if such sale is accompanied by a brand inspection by the department
22 such assessment may be collected at the same time, place and in the
23 same manner as brand inspection fees. Such fees may be collected by
24 the livestock services division of the department and transmitted to
25 the commission: PROVIDED FURTHER, That, if such sale is made without
26 a brand inspection by the department the assessment shall be paid by
27 the seller and transmitted directly to the commission by the fifteenth
28 day of the month following the month the transaction occurred.

29 (2) The procedures for collecting all state and federal assessments
30 under this chapter shall be as required by the federal order and as
31 described by rules adopted by the commission.

32 **Sec. 84.** RCW 16.67.122 and 2000 c 146 s 6 are each amended to read
33 as follows:

34 In addition to the assessment authorized pursuant to RCW 16.67.120,
35 the commission has the authority to collect an additional assessment of
36 (~~(one dollar)~~) fifty cents per head for cattle subject to assessment by
37 federal order for the purpose of providing funds for a national beef

1 promotion and research program. The manner in which this assessment
2 will be levied and collected shall be established by rule. The
3 authority to collect this assessment shall be contingent upon the
4 implementation of federal legislation providing for a national beef
5 promotion and research program and the establishment of the assessment
6 requirement to fund its activities.

7 NEW SECTION. **Sec. 85.** A new section is added to chapter 16.67 RCW
8 to read as follows:

9 The commission has the power to subpoena witnesses and to issue
10 subpoenas for the production of any books, records, or documents of any
11 kind for the purpose of enforcing this chapter.

12 NEW SECTION. **Sec. 86.** A new section is added to chapter 16.67 RCW
13 to read as follows:

14 (1) The commission shall reimburse the director for necessary costs
15 for services conducted on behalf of the commission under this chapter.

16 (2) The commission may enter into an agreement with the director to
17 administer this chapter or chapter 34.05 RCW.

18 NEW SECTION. **Sec. 87.** A new section is added to chapter 15.44 RCW
19 to read as follows:

20 The history, economy, culture, and the future of Washington state's
21 agriculture involves the dairy industry. In order to develop and
22 promote Washington's dairy products as part of an existing
23 comprehensive scheme to regulate those products the legislature
24 declares:

25 (1) That the Washington state dairy products commission is created.
26 The commission may also take actions under the name "the dairy farmers
27 of Washington";

28 (2) That it is vital to the continued economic well-being of the
29 citizens of this state and their general welfare that its dairy
30 products be properly promoted by (a) enabling the dairy industry to
31 help themselves in establishing orderly, fair, sound, efficient, and
32 unhampered marketing, grading, and standardizing of the dairy products
33 they produce; and (b) working to stabilize the dairy industry by
34 increasing consumption of dairy products within the state, the nation,
35 and internationally;

1 (3) That dairy producers operate within a regulatory environment
2 that imposes burdens on them for the benefit of society and the
3 citizens of the state and includes restrictions on marketing autonomy.
4 Those restrictions may impair the dairy producer's ability to compete
5 in local, domestic, and foreign markets;

6 (4) That it is in the overriding public interest that support for
7 the dairy industry be clearly expressed, that adequate protection be
8 given to agricultural commodities, uses, activities, and operations,
9 and that dairy products be promoted individually, and as part of a
10 comprehensive industry to:

11 (a) Enhance the reputation of Washington state's agriculture
12 industry;

13 (b) Increase the sale and use of Washington state's dairy products
14 in local, domestic, and foreign markets;

15 (c) Protect the public by educating the public in reference to the
16 quality, care, and methods used in the production of Washington state's
17 dairy products;

18 (d) Increase the knowledge of the health giving qualities and
19 dietetic value of dairy products; and

20 (e) Support and engage in programs or activities that benefit the
21 production, handling, processing, marketing, and uses of dairy products
22 produced in Washington state;

23 (5) That this chapter is enacted in the exercise of the police
24 powers of this state for the purpose of protecting the health, peace,
25 safety, and general welfare of the people of this state; and

26 (6) That the dairy industry is a highly regulated industry and
27 that this chapter and the rules adopted under it are only one aspect of
28 the regulated industry. Other regulations and restraints applicable to
29 the dairy industry include the:

30 (a) Federal marketing order under 7 C.F.R., Part 1124;

31 (b) Dairy promotion program under the dairy and tobacco adjustment
32 act of 1983, Subtitle B;

33 (c) Milk and milk products act under chapter 15.36 RCW and rules,
34 including the:

35 (i) The national conference of interstate milk shippers pasteurized
36 milk ordinance;

37 (ii) The national conference of interstate milk shippers dry milk
38 ordinance;

39 (iii) Standards for the fabrication of single-service containers;

1 (iv) Procedures governing cooperative state-public health service;
2 (v) Methods of making sanitation ratings of milk supplies;
3 (vi) Evaluation and certification of milk laboratories; and
4 (vii) Interstate milk shippers;
5 (d) Milk and milk products for animal food act under chapter 15.37
6 RCW and rules;
7 (e) Organic food products act under chapter 15.86 RCW and rules;
8 (f) Intrastate commerce in food, drugs, and cosmetics act under
9 chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating
10 to the general manufacturing practices, milk processing, food labeling,
11 food standards, and food additives;
12 (g) Washington food processing act under chapter 69.07 RCW and
13 rules;
14 (h) Washington food storage warehouses act under chapter 69.10 RCW
15 and rules;
16 (i) Animal health under chapter 16.36 RCW and rules;
17 (j) Weighmasters under chapter 15.80 RCW and rules; and
18 (k) Dairy nutrient management act under chapter 90.64 RCW and
19 rules.

20 **Sec. 88.** RCW 15.44.010 and 1985 c 261 s 17 are each amended to
21 read as follows:

22 As used in this chapter:

23 "Commission" means the Washington state dairy products commission;

24 To "ship" means to deliver or consign milk or cream to a person
25 dealing in, processing, distributing, or manufacturing dairy products
26 for sale, for human consumption or industrial or medicinal uses;

27 "Handler" means one who purchases milk, cream, or skimmed milk for
28 processing, manufacturing, sale, or distribution;

29 "Dealer" means one who handles, ships, buys, and sells dairy
30 products, or who acts as sales or purchasing agent, broker, or factor
31 of dairy products;

32 "Mail" or "send" for purposes of any notice relating to rule
33 making, referenda, or elections means regular mail or electronic
34 distribution, as provided in RCW 34.05.260 for rule making.

35 "Electronic distribution" or "electronically" means distribution by
36 electronic mail or facsimile mail;

1 "Processor" means a person who uses milk or cream for canning,
2 drying, manufacturing, preparing, or packaging or for use in producing
3 or manufacturing any product therefrom;

4 "Producer" means a person who produces milk from cows and sells it
5 for human or animal food, or medicinal or industrial uses;

6 "Maximum authorized assessment rate" means the level of assessment
7 most recently approved by a referendum of producers;

8 "Current level of assessment" means the level of assessment paid by
9 the producer as set by the commission which cannot exceed the maximum
10 authorized assessment rate.

11 **Sec. 89.** RCW 15.44.020 and 1979 ex.s. c 238 s 2 are each amended
12 to read as follows:

13 (~~There is hereby created a Washington state dairy products~~
14 ~~commission to be thus known and designated: PROVIDED, That the~~
15 ~~commission may take actions under the name, "the dairy farmers of~~
16 ~~Washington".~~)) The dairy products commission shall be composed of not
17 more than ten members. There shall be one member from each district
18 who shall be a practical producer of dairy products to be elected by
19 such producers, one member shall be a dealer, and one member shall be
20 a producer who also acts as a dealer, and such dealer and producer who
21 acts as a dealer shall be appointed by the director of agriculture, and
22 the director of agriculture shall be an ex officio member without vote.

23 **Sec. 90.** RCW 15.44.035 and 1965 ex.s. c 44 s 7 are each amended to
24 read as follows:

25 (1) The commission shall prior to each election, in sufficient time
26 to satisfy the requirements of RCW 15.44.033, furnish the director with
27 a list of all producers within the district for which the election is
28 being held. The commission shall require each dealer and shipper in
29 addition to the information required under RCW 15.44.110 to furnish the
30 commission with a list of names of producers whose milk they handle.

31 (2) Any producer may on his or her own motion file his or her name
32 with the commission for the purpose of receiving notice of election.

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

35 (4) For all purposes of giving notice, holding referenda, and
36 electing members of the commission, the applicable list of producers
37 corrected up to the day preceding the date the list is certified and

1 mailed to the director is deemed to be the list of all producers or
2 handlers, as applicable, entitled to notice or to vote. The list shall
3 be corrected and brought up-to-date in accordance with evidence and
4 information provided to the commission.

5 NEW SECTION. Sec. 91. A new section is added to chapter 15.44 RCW
6 to read as follows:

7 (1) The commission shall reimburse the director for necessary costs
8 for services conducted on behalf of the commission under this chapter.

9 (2) The commission may enter into an agreement with the director to
10 administer this chapter or chapter 34.05 RCW.

11 **Sec. 92.** RCW 15.44.038 and 1984 c 287 s 15 are each amended to
12 read as follows:

13 (1) A majority of the commission members shall constitute a quorum
14 for the transaction of all business and the performance of all duties
15 of the commission.

16 (2) Each member shall be compensated in accordance with RCW
17 43.03.230 ((and)). Each member or employee shall be reimbursed for
18 actual travel expenses incurred in carrying out the provisions of this
19 chapter as defined by the commission in rule. Otherwise, if not
20 defined in rule, reimbursement for travel expenses shall be at the
21 rates allowed by RCW 43.03.050 and 43.03.060.

22 **Sec. 93.** RCW 15.44.060 and 1999 c 300 s 1 are each amended to read
23 as follows:

24 The commission shall have the power and duty to:

25 (1) Elect a chairman and such other officers as it deems advisable,
26 and adopt, rescind, and amend rules, regulations, and orders for the
27 exercise of its powers, which shall have the effect of law when not
28 inconsistent with existing laws;

29 (2) Administer and enforce the provisions of this chapter and
30 perform all acts and exercise all powers reasonably necessary to
31 effectuate the purpose hereof;

32 (3) Employ and discharge advertising counsel, advertising agents,
33 and such attorneys, agents, and employees as it deems necessary, and
34 prescribe their duties and powers and fix their compensation;

1 (4) Establish offices, incur expenses, enter into contracts, and
2 create such liabilities as are reasonable and proper for the proper
3 administration of this chapter;

4 (5) Investigate and prosecute violations of this chapter;

5 (6) Conduct scientific research designed to improve milk
6 production, quality, transportation, processing, and distribution and
7 to develop and discover uses for products of milk and its derivatives;

8 (7) Make in its name such ~~((advertising))~~ contracts and other
9 agreements as are necessary to build demand and promote the sale of
10 dairy products on either a state, national, or foreign basis;

11 (8) Keep accurate records of all its dealings, which shall be open
12 to public inspection and audit by the regular agencies of the state;

13 (9) Conduct the necessary research to develop more efficient and
14 equitable methods of marketing dairy products, and enter upon, singly
15 or in participation with others, the promotion and development of
16 state, national, or foreign markets; ~~((and))~~

17 (10) Participate in federal and state agency hearings, meetings,
18 and other proceedings relating to the regulation of the production,
19 manufacture, distribution, sale, or use of dairy products, to provide
20 educational meetings and seminars for the dairy industry on such
21 matters, and to expend commission funds for such activities;

22 (11) Retain the services of private legal counsel to conduct legal
23 actions, on behalf of the commission. The retention of a private
24 attorney is subject to the review of the office of the attorney
25 general;

26 (12) Work cooperatively with other local, state, and federal
27 agencies, universities, and national organizations for the purposes of
28 this chapter;

29 (13) Accept and expend or retain any gifts, bequests,
30 contributions, or grants from private persons or private and public
31 agencies to carry out the purposes of this chapter;

32 (14) Engage in appropriate fund-raising activities for the purpose
33 of supporting activities of the commission authorized by this chapter;

34 (15) Expend funds for commodity-related education, training, and
35 leadership programs as the commission deems appropriate; and

36 (16) Work cooperatively with nonprofit and other organizations to
37 carry out the purposes of this chapter.

1 **Sec. 94.** RCW 15.44.070 and 1975 1st ex.s. c 7 s 39 are each
2 amended to read as follows:

3 (1) Every rule(~~(, regulation,)~~) or order made by the commission
4 shall be filed with the director and published in two legal newspapers,
5 one east and one west of the Cascade mountains (~~(and one west~~
6 ~~thereof)~~), within ten days after it is (~~(promulgated)~~) adopted, and
7 (~~(shall become)~~) is effective (~~(pursuant to the provisions of)~~) as set
8 forth under RCW 34.05.380.

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

14 **Sec. 95.** RCW 15.44.080 and 1985 c 261 s 18 are each amended to
15 read as follows:

16 (1) There is hereby levied upon all milk produced in this state an
17 assessment of (~~(0.6%)~~):

18 (a) 0.75 percent of class I price for 3.5(~~(%)~~) percent butter fat
19 milk as established in any market area by a market order in effect in
20 that area or by the state department of agriculture in case there is no
21 market order for that area; (~~(and)~~) or

22 (b) While the federal dairy and tobacco adjustment act of 1983,
23 Title I, Subtitle B-dairy promotion program, is in effect:

24 (i) An assessment rate not to exceed the rate approved at the most
25 recent referendum that would achieve a ten cent per hundredweight
26 credit to local, state, or regional promotion organizations provided by
27 Title I, Subtitle B of the federal dairy and tobacco adjustment act of
28 1983; and

29 (ii) An additional assessment of .00625 per hundredweight.

30 (2) Subject to approval by a producer referendum as provided in
31 this section, the commission shall have the further power and duty to
32 increase the amount of the maximum authorized assessment rate to be
33 levied upon either milk or cream according to the necessities required
34 to effectuate the stated purpose of the commission.

35 In determining such necessities, the commission shall consider one
36 or more of the following:

37 (a) The necessities of(~~(—)~~):

1 (i) Developing better and more efficient methods of marketing milk
2 and related dairy products;

3 (ii) Aiding dairy producers in preventing economic waste in the
4 marketing of their commodities;

5 (iii) Developing and engaging in research for developing better and
6 more efficient production, marketing, and utilization of agricultural
7 products;

8 (iv) Establishing orderly marketing of dairy products;

9 (v) Providing for uniform grading and proper preparation of dairy
10 products for market;

11 (vi) Providing methods and means including but not limited to
12 public relations and promotion, for the maintenance of present markets,
13 for development of new or larger markets, both domestic and foreign,
14 for dairy products produced within this state, and for the prevention,
15 modification, or elimination of trade barriers which obstruct the free
16 flow of such agricultural commodities to market;

17 (vii) Restoring and maintaining adequate purchasing power for dairy
18 producers of this state; and

19 (viii) Protecting the interest of consumers by assuring a
20 sufficient pure and wholesome supply of milk and cream of good quality;

21 (b) The extent and probable cost of required research and market
22 promotion and advertising;

23 (c) The extent of public convenience, interest, and necessity; and

24 (d) The probable revenue from the assessment as a consequence of
25 its being revised.

26 (3)(a) This section shall apply where milk or cream is marketed
27 either in bulk or package. However, this section shall not apply to
28 milk or cream used upon the farm or in the household where produced.

29 (b) The increase in the maximum authorized assessment rate to be
30 charged producers on milk and cream provided for in this section shall
31 not become effective until approved by fifty-one percent of the
32 producers voting in a referendum conducted by the commission.

33 The referendum for approval of any increase in the maximum
34 authorized assessment rate provided for in this section shall be by
35 secret mail ballot furnished to all producers paying assessments to the
36 commission. The commission shall furnish ballots to producers at least
37 ten days in advance of the day it has set for concluding the referendum
38 and counting the ballots. Any interested producer may be present at
39 such time the commission counts (~~said~~) the ballots.

1 **Sec. 96.** RCW 15.44.085 and 1979 ex.s. c 238 s 5 are each amended
2 to read as follows:

3 There is hereby levied on every hundredweight of class I or class
4 II milk, as defined in RCW 15.44.087, sold by a dealer, including any
5 milk sold by a producer who acts as a dealer, an assessment of:

6 (1) Five-eighths of one cent per hundredweight. Such assessment
7 shall be in addition to the producer assessment paid by any producer
8 who also acts as a dealer.

9 (2) Any additional assessment, within the power and duty of the
10 commission to levy, such that the total assessment shall not exceed one
11 cent per hundredweight, as required to effectuate the purpose of this
12 section.

13 Such assessment may be increased by approval of dealers and
14 producers who also act as dealers, subject to the standards set forth
15 in chapter 15.44 RCW for increasing or decreasing assessments. The
16 funds derived from such assessment shall be used for educational
17 programs (~~((in institutions of learning))~~) and the sum of such funds
18 derived annually from said dealers and producers who act as dealers
19 shall be matched by assessments derived from producers for the purpose
20 of funding (~~((said))~~) the educational purposes (~~((in institutions of~~
21 ~~learning))~~) by an amount not less than the moneys collected from dealers
22 and producers who act as dealers.

23 **Sec. 97.** RCW 15.44.110 and 1961 c 11 s 15.44.110 are each amended
24 to read as follows:

25 (1) Each dealer and shipper shall at such times as by rule (~~((or~~
26 ~~regulation))~~) required(~~((7))~~) file with the commission a return under oath
27 on forms to be furnished by the commission, stating the quantity of
28 dairy products handled, processed, manufactured, delivered, and
29 shipped, and the quantity of all milk and cream delivered to or
30 purchased by such person from the various producers of dairy products
31 or their agents in the state during the period or periods prescribed by
32 the commission.

33 (2) The commission has the authority to issue subpoenas for the
34 production of books, records, documents, and other writings of any kind
35 and may issue subpoenas to witnesses to give testimony.

36 **Sec. 98.** RCW 15.44.140 and 1961 c 11 s 15.44.140 are each amended
37 to read as follows:

1 (1) The commission through its agents may inspect the premises and
2 records of any carrier, handler, dealer, manufacturer, processor, or
3 distributor of dairy products for the purpose of enforcing this
4 chapter.

5 (2) The commission has the authority to issue subpoenas for the
6 production of books, records, documents, and other writings of any kind
7 for any carrier, handler, dealer, manufacturer, processor, or
8 distributor of dairy products for the purpose of enforcing this
9 chapter.

10 NEW SECTION. Sec. 99. A new section is added to chapter 15.44 RCW
11 to read as follows:

12 The commission is authorized to adopt rules governing promotional
13 hosting expenditures by commission employees, agents, or board members
14 under RCW 15.04.200.

15 NEW SECTION. Sec. 100. A new section is added to chapter 15.44
16 RCW to read as follows:

17 The commission may establish foundations using commission funds as
18 grant money when the foundation benefits the dairy products industry.
19 Commission funds may only be used for the purposes authorized in this
20 chapter.

21 NEW SECTION. Sec. 101. A new section is added to chapter 15.44
22 RCW to read as follows:

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

28 **Sec. 102.** RCW 15.44.150 and 1961 c 11 s 15.44.150 are each amended
29 to read as follows:

30 (~~The state shall not be liable for the acts or on the contracts of~~
31 ~~the commission, nor shall any member or employee of the commission be~~
32 ~~liable on its contracts.)) Any action by the commission administrator,
33 member, employee, or agent thereof pertaining to the performance or
34 nonperformance or misperformance of any matters or things authorized,
35 required, or permitted by this chapter, and any other liabilities,~~

1 debts, or claims against the commission shall be enforced in the same
2 manner as if the commission were a corporation. Liability for the
3 debts or actions of the commission's administrator, member, employee,
4 or agent incurred in their official capacity under this chapter does
5 not exist either against the administrator, members, employees, and
6 agents in their individual capacity or the state of Washington. The
7 administrator, its members, and its agents and employees are not
8 responsible individually in any way whatsoever to any person for errors
9 in judgment, mistakes, or other acts, either of commission or omission,
10 as principal, agent, person, or employee, except for their own
11 individual acts of dishonesty or crime.

12 All persons employed or contracting under this chapter shall be
13 limited to, and all salaries, expenses, and liabilities incurred by the
14 commission shall be payable only from the funds collected ((hereunder))
15 under this chapter.

16 NEW SECTION. Sec. 103. A new section is added to chapter 15.28
17 RCW to read as follows:

18 The history, economy, culture, and the future of Washington state's
19 agriculture involves the production of soft tree fruits. In order to
20 develop and promote Washington's soft tree fruits as part of an
21 existing comprehensive regulatory scheme the legislature declares:

22 (1) That the Washington state fruit commission is created;

23 (2) That it is vital to the continued economic well-being of the
24 citizens of this state and their general welfare that its soft tree
25 fruits be properly promoted by (a) enabling the soft tree fruit
26 industry to help themselves in establishing orderly, fair, sound,
27 efficient, and unhampered cooperative marketing, grading, and
28 standardizing of soft tree fruits they produce; and (b) working to
29 stabilize the soft tree fruit industry by increasing consumption of
30 soft tree fruits within the state, the nation, and internationally;

31 (3) That producers of soft tree fruits operate within a regulatory
32 environment that imposes burdens on them for the benefit of society and
33 the citizens of the state and includes restrictions on marketing
34 autonomy. Those restrictions may impair the producers of soft tree
35 fruits in their ability to compete in local, domestic, and foreign
36 markets;

37 (4) That it is in the overriding public interest that support for
38 the soft tree fruit industry be clearly expressed, that adequate

1 protection be given to agricultural commodities, uses, activities, and
2 operations, and that soft tree fruits be promoted individually, and as
3 part of a comprehensive industry to:

4 (a) Enhance the reputation of Washington state's agriculture
5 industry;

6 (b) Increase the sale and use of Washington state's soft tree
7 fruits in local, domestic, and foreign markets;

8 (c) Protect the public by educating the public in reference to the
9 quality, care, and methods used in the production of Washington state's
10 soft tree fruits;

11 (d) Increase the knowledge of the health-giving qualities and
12 dietetic value of soft tree fruits;

13 (e) Support and engage in cooperative programs or activities that
14 benefit the production, handling, processing, marketing, and uses of
15 soft tree fruits produced in Washington state;

16 (5) That this chapter is enacted in the exercise of the police
17 powers of this state for the purpose of protecting the health, peace,
18 safety, and general welfare of the people of this state and to
19 stabilize and protect the soft tree fruit industry of the state; and

20 (6) That the production and marketing of soft tree fruit is a
21 highly regulated industry and that the provisions of this chapter and
22 the rules adopted under it are only one aspect of the regulated
23 industry. Other regulations and restraints applicable to the soft tree
24 fruit industry include:

25 (a) The federal marketing order under 7 C.F.R. Part 922 (apricots);

26 (b) The federal marketing order under 7 C.F.R. Part 923 (sweet
27 cherries);

28 (c) The federal marketing order under 7 C.F.R. Part 924 (prunes);

29 (d) The federal marketing order under 7 C.F.R. Part 930 (tart
30 cherries);

31 (e) The federal marketing order under 7 C.F.R. Part 931 (Bartlett
32 pears);

33 (f) Tree fruit research act under chapter 15.26 RCW;

34 (g) Controlled atmosphere storage of fruits and vegetables under
35 chapter 15.30 RCW;

36 (h) Organic food products act under chapter 15.86 RCW;

37 (i) Intrastate commerce in food, drugs, and cosmetics under chapter
38 69.04 RCW and rules;

39 (j) Washington food processing act under chapter 69.07 RCW;

- 1 (k) Washington food storage warehouses act under chapter 69.10 RCW;
2 (l) Weighmasters under chapter 15.80 RCW;
3 (m) Horticultural pests and diseases under chapter 15.08 RCW;
4 (n) Horticultural plants and facilities - inspection and licensing
5 under chapter 15.13 RCW;
6 (o) Planting stock under chapter 15.14 RCW;
7 (p) Standards of grades and packs under chapter 15.17 RCW;
8 (q) Washington pesticide control act under chapter 15.58 RCW;
9 (r) Farm marketing under chapter 15.64 RCW;
10 (s) Insect pests and plant diseases under chapter 17.24 RCW;
11 (t) Weights and measures under chapter 19.94 RCW;
12 (u) Agricultural products - commission merchants, dealers, brokers,
13 buyers, and agents under chapter 20.01 RCW; and
14 (v) Rules under the Washington Administrative Code, Title 16.

15 **Sec. 104.** RCW 15.28.010 and 1989 c 354 s 27 are each amended to
16 read as follows:

17 As used in this chapter:

- 18 (1) "Commission" means the Washington state fruit commission.
19 (2) "Shipment" or "shipped" includes loading in a conveyance to be
20 transported to market for resale, and includes delivery to a processor
21 or processing plant, but does not include movement from the orchard
22 where grown to a packing or storage plant within this state for fresh
23 shipment;
24 (3) "Handler" means any person who ships or initiates the shipping
25 operation, whether as owner, agent or otherwise;
26 (4) "Dealer" means any person who handles, ships, buys, or sells
27 soft tree fruits other than those grown by him or her, or who acts as
28 sales or purchasing agent, broker, or factor of soft tree fruits;
29 (5) "Processor" or "processing plant" includes every person or
30 plant receiving soft tree fruits for the purpose of drying,
31 dehydrating, canning, pressing, powdering, extracting, cooking, quick-
32 freezing, brining, or for use in manufacturing a product;
33 (6) "Soft tree fruits" mean Bartlett pears and all varieties of
34 cherries, apricots, prunes, plums, and peaches, which includes all
35 varieties of nectarines. "Bartlett pears" means and includes all
36 standard Bartlett pears and all varieties, strains, subvarieties, and
37 sport varieties of Bartlett pears including Red Bartlett pears, that

1 are harvested and utilized at approximately the same time and
2 approximately in the same manner.

3 (7) "Commercial fruit" or "commercial grade" means soft tree fruits
4 meeting the requirements of any established or recognized fresh fruit
5 or processing grade. Fruit bought or sold on orchard run basis and not
6 subject to cull weighback shall be deemed to be "commercial fruit."

7 (8) "Cull grade" means fruit of lower than commercial grade except
8 when such fruit included with commercial fruit does not exceed the
9 permissible tolerance permitted in a commercial grade;

10 (9) "Producer" means any person who is a grower of any soft tree
11 fruit;

12 (10) "District No. 1" or "first district" includes the counties of
13 Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane
14 and Lincoln;

15 (11) "District No. 2" or "second district" includes the counties of
16 Kittitas, Yakima, and Benton county north of the Yakima river;

17 (12) "District No. 3" or "third district" comprises all of the
18 state not included in the first and second districts;

19 (13) "Mail" or "send" for purposes of any notice relating to rule
20 making, referenda, or elections means regular mail or electronic
21 distribution, as provided in RCW 34.05.260 for rule making.
22 "Electronic distribution" or "electronically" means distribution by
23 electronic mail or facsimile mail;

24 (14) "Department" means the department of agriculture;

25 (15) "Director" means the director of agriculture.

26 **Sec. 105.** RCW 15.28.020 and 1967 c 191 s 1 are each amended to
27 read as follows:

28 (~~(A corporation to be known as the Washington state fruit~~
29 ~~commission is hereby created,)) The commission is composed of sixteen
30 voting members, (~~(to wit))~~ as follows: Ten producers, four dealers,
31 and two processors, who (~~(shall be))~~ are elected and qualified as
32 (~~(herein))~~ provided in this chapter. The director (~~(of agriculture,~~
33 ~~hereinafter referred to as the director, or his duly)), or an~~
34 authorized representative, shall be an ex officio member without a
35 vote.~~

36 A majority of the voting members (~~(shall))~~ constitute a quorum for
37 the transaction of any business.

1 **Sec. 106.** RCW 15.28.110 and 1961 c 11 s 15.28.110 are each amended
2 to read as follows:

3 The commission's duties are:

4 (1) To adopt a (~~corporate~~) commission seal;

5 (2) To elect a secretary-manager(~~(7)~~) and a treasurer, and fix
6 their compensation. The same person may be elected to both (~~of said~~)
7 offices;

8 (3) To establish classifications of soft tree fruits;

9 (4) To conduct scientific research and develop the healthful,
10 therapeutic, and dietetic value of (~~said~~) fruits, and promote the
11 general welfare of the soft tree fruit industry of the state;

12 (5) To conduct a comprehensive advertising and educational campaign
13 to effectuate the objects of this chapter;

14 (6) To increase the production, and develop and expand the markets,
15 and improve the handling and quality of (~~said~~) fruits;

16 (7) To keep accurate accounts and records of all of its dealings,
17 which shall be open to inspection and audit by the state auditor;

18 (8) To investigate and prosecute violations (~~hereof~~) of this
19 chapter; and

20 (9) To serve as an advisory committee to the director with regard
21 to the adoption and enforcement of rules:

22 (a) Governing the grading, packing, and size and dimensions of
23 commercial containers of soft tree fruits; and

24 (b) Fixing commercial grades of soft tree fruits and the issuance
25 of certificates of inspection for those fruits.

26 **Sec. 107.** RCW 15.28.130 and 1961 c 11 s 15.28.130 are each amended
27 to read as follows:

28 Neither the state, nor any member, agent, or employee of the
29 commission, (~~shall be~~) is liable for the acts of the commission, or
30 upon its contracts.

31 All salaries, expenses, costs, obligations, and liabilities of the
32 commission, and claims arising from the administration of this chapter,
33 (~~shall be~~) are payable only from funds collected (~~hereunder~~) under
34 this chapter.

35 In any civil or criminal action or proceeding for violation of any
36 rule of statutory or common law against monopolies or combinations in
37 restraint of trade, including any action under chapter 19.86 RCW, proof
38 that the act complained of was done in compliance with the provisions

1 of this chapter, and in furtherance of the purposes and provisions of
2 this chapter, is a complete defense to such an action or proceeding.

3 **Sec. 108.** RCW 15.28.250 and 1961 c 11 s 15.28.250 are each amended
4 to read as follows:

5 Unless the assessment has been paid by the grower and evidence
6 thereof submitted by him or her, the dealer, handler, or processor
7 (~~shall be~~) is responsible for the payment of all assessments
8 (~~hereunder~~) under this chapter on all soft tree fruits handled,
9 shipped, or processed by him or her but he or she shall charge the same
10 against the grower, who shall be primarily responsible for such
11 payment. Assessments are due upon receipt of an invoice for the
12 assessments.

13 If the assessment becomes delinquent, the department shall cease to
14 provide inspection services under chapter 15.17 RCW to the delinquent
15 party until that party pays all delinquent assessments, interest, and
16 penalties.

17 Any assessment due and payable under this section constitutes a
18 personal debt of every person so assessed or who otherwise owes the
19 same. In addition, the commission may add to such unpaid assessment or
20 sum an amount not exceeding ten percent of the same to defray the cost
21 of enforcing the collecting of the same. In the event of failure of
22 such person or persons to pay any such due and payable assessment or
23 other such sum, the commission may bring a civil action against such
24 person or persons, together with the specified ten percent thereon, and
25 such action shall be tried and judgment rendered as in any other cause
26 of action for debt due and payable.

27 NEW SECTION. **Sec. 109.** A new section is added to chapter 15.28
28 RCW to read as follows:

29 Rule-making proceedings conducted under this chapter are exempt
30 from compliance with RCW 34.05.310 and the provisions of chapter 19.85
31 RCW, the regulatory fairness act, when adoption of the rule is
32 determined by a referendum vote of the affected parties.

33 **Sec. 110.** RCW 15.88.050 and 1987 c 452 s 5 are each amended to
34 read as follows:

35 The director shall appoint the members of the commission. In
36 making such appointments of the voting members, the director shall take

1 into consideration recommendations made by the growers' association and
2 the wine institute as the persons recommended for appointment as
3 members of the commission. In appointing persons to the commission,
4 the director shall seek to ensure as nearly as possible a balanced
5 representation on the commission which would reflect the composition of
6 the growers and wine producers throughout the state as to number of
7 acres cultivated and amount of wine produced.

8 The appointment shall be carried out immediately subsequent to July
9 1, 1987, and members so appointed as set forth in this chapter shall
10 serve for the periods set forth for the original members of the
11 commission under RCW 15.88.040.

12 In the event a position on the commission becomes vacant due to
13 resignation, disqualification, death, or for any other reason, the
14 unexpired term of the position shall immediately be filled by
15 appointment by the director.

16 Each member or employee of the commission shall be reimbursed for
17 actual travel expenses ((in accordance with)) incurred in carrying out
18 the provisions of this chapter as defined by the commission in rule.
19 Otherwise if not defined in rule, reimbursement for travel expenses
20 shall be at the rates allowed by RCW 43.03.050 and 43.03.060.

21 NEW SECTION. Sec. 111. A new section is added to chapter 43.23
22 RCW to read as follows:

23 The director may consult with each commodity commission established
24 under state law in order to establish or maintain an integrated
25 comprehensive regulatory scheme for each commodity and the agricultural
26 industry in this state as a whole.

27 NEW SECTION. Sec. 112. The following acts or parts of acts are
28 each repealed:

- 29 (1) RCW 16.67.020 (Purpose of chapter) and 1969 c 133 s 19;
30 (2) RCW 15.44.037 (Reimbursement of election costs) and 1965 ex.s.
31 c 44 s 8;
32 (3) RCW 15.44.900 (Purpose of chapter) and 1961 c 11 s 15.44.900;
33 and
34 (4) RCW 15.28.900 (Preamble) and 1961 c 11 s 15.28.900.

1 NEW SECTION. **Sec. 113.** This act takes effect July 1, 2002.

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