

# HOUSE BILL REPORT

## HB 1361

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### As Passed Legislature

**Title:** An act relating to the state agricultural commodity commissions.

**Brief Description:** Increasing the powers of the state agricultural commodity commissions.

**Sponsors:** By Representatives Linville, Schoesler, Grant and Holmquist.

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 2/7/03, 2/11/03 [DP].

#### Floor Activity:

Passed House: 2/24/03, 96-0.

Passed Senate: 4/17/03, 49-0.

Passed Legislature.

Senate Amended.

Passed Senate: 4/17/03, 49-0.

House Concurred.

Passed House: 4/24/03, 91-0.

Passed Legislature.

### Brief Summary of Bill

- Revises or adds numerous provisions regarding supervision, operation, and governance of various commodity commissions and commodity boards.
- Adds requirements for the Director of the Department of Agriculture to appoint members to and serve as a voting member of various commodity commissions and commodity boards.
- Allows commodity commissions to request and audit producer records to determine whether assessments have been paid.
- Allows commodity commissions to acquire and own intellectual property and to collect royalties from commission-funded research.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant

Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

**Staff:** Caroleen Dineen (786-7156).

**Background:**

A commodity commission may be established for a particular agricultural commodity. Some commodity commissions are created directly by statute. Some examples of commodities for which commissions have been created directly in statute are apple advertising, dairy products, and beef. A commodity commission also may be established according to the requirements of the Washington Agricultural Enabling Act (the 1955 enabling statutes). Commodity commissions have been created in this manner for wheat, potato, fryers, barley, and other commodities.

Another entity created for a particular commodity is a commodity board. A commodity board is created according to the Washington State Agricultural Enabling Act (the 1961 enabling statutes). Some examples of commodities for which boards have been created are hops, cranberries, asparagus, and turfgrass seed.

A commodity commission established according to the 1955 enabling statutes is created through the Department of Agriculture's issuance of a marketing order, which is adopted as a rule. Commodity commissions may be created in this manner to:

- plan and conduct advertising, sales promotion, and marketing programs;
- conduct research studies;
- improve standards and grades and provide labeling requirements;
- prevent unfair trade practices;
- provide marketing information and services;
- engage in cooperative efforts in domestic or foreign marketing; and
- provide information, communication, education, and training.

Statutory provisions specify procedural and other requirements for petitioning for a marketing order and for issuing, amending, and terminating a marketing order.

A commodity commission established according to the 1955 enabling statutes has the powers and duties specified in the marketing order creating it. In addition to those powers and among other powers specified in statute, a commodity commission may elect officers, adopt rules, administer and enforce the provisions of the marketing order, acquire property, borrow money, expend funds, enter into contracts, and engage in fund raising.

The state and its agencies are authorized to invest funds in various investment vehicles, including bonds, mutual funds, and money markets funds. State statutes specify

requirements for investment and management of these state funds. The commodity commissions statutes authorize commodity commissions to invest in savings or time deposits in banks, trust companies, and mutual savings banks or according to other authority for investment of these funds.

In March 2003 a federal district court in Washington determined the Apple Commission's statutory authority to collect mandatory assessment is unconstitutional. *In re Washington State Apple Advertising Commission*, Case No. CS-01-0278-EFS (U.S. District Court, Eastern District of Washington, filed March 31, 2003). The court in that case concluded the Apple Commission's activities are not part of a comprehensive regulatory structure and that its marketing program is not government speech protected from constitutional challenge.

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## **Summary of Bill:**

### Commodity Commissions and Boards and Specific Commissions

Numerous provisions are added regarding supervision, governance, and operation of various commodity commissions created according to the 1955 enabling statutes, commodity boards created according to the 1961 enabling statutes, commissions for soft tree fruits, the Dairy Products Commission, the Beef Commission, and the Wine Commission. First, provisions are included regarding commissions' and boards' advertising and promotion. Each commission or board is specified to exist primarily for the benefit of the people of the state and its economy and is charged with speaking, with oversight by the Director of the Washington Department of Agriculture (WSDA), on behalf of the state government with regard to its particular commodity.

Second, provisions are added requiring approval by the WSDA Director of commodity commissions' and commodity boards' programs, activities, and budgets. Each commission and board must develop and submit to the WSDA Director for review and approval any plans, programs, and projects concerning commodity advertising, promotion, market research projects, market development projects, research plans, education and training plans, and budgets. The commissions and boards must pay the WSDA's costs for these reviews. The Director of the WSDA must review each advertising or promotion program to ensure no false claims are begin made regarding the commodity. The WSDA Director also must strive for timely review of all submitted documents.

Third, provisions regarding selection of commission and board members are modified. The WSDA Director or designee serves as a voting member of each of these commissions and boards. In addition, requirements for election of commission and board members are modified by or replaced with various procedures for appointment by the WSDA Director of all or a majority of the members. Provisions also are included for

advisory votes for appointment of commission and board members and for interim appointment of current members of some commissions and boards until their terms expire.

Fourth, a provision is added to the Dairy Products Commission statutes specifying that neither the state of Washington or any of its subdivisions is liable for its debts or actions.

#### Commissions Created Under the 1955 Enabling Statutes

Additional authority is granted to commodity commissions created under the Washington Agricultural Enabling Act. In addition to other powers specified in statute, a commodity commission created in this manner may:

- request and audit records of producers or handlers of the affected commodity to determine whether the appropriate assessment has been paid;
- acquire or own intellectual property rights, licenses, or patents related to the affected commodity; and
- collect royalties resulting from commission-funded research related to the affected commodity.

Provisions regarding marketing orders for commodity commissions are amended. Among other purposes, marketing orders may be made for commodity commissions to assist and cooperate with the Department of Agriculture or any other federal, state, or local agency in investigating and controlling exotic pests and diseases that could damage or affect trade of the affected commodity.

The provision authorizing commodity commissions to invest funds according to authority other than the commodity commission statutes is amended to reference statutes specifying requirements for management and investment of state funds.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** The Office of the Attorney General (AG) and Washington State Auditor's Office (SAO) suggested the statutory changes in this bill. The Washington State Potato Commission reviewed the bill's language with the AG and the SAO and worked with the Department of Agriculture and the other affected commodity commissions on this bill.

**Testimony Against:** None.

**Testified:** Charlie Brown, Washington State Potato Commission.