
HOUSE BILL 2367

State of Washington

58th Legislature

2004 Regular Session

By Representatives Linville, Schoesler, Campbell, McDonald, Delvin, Sullivan, Hunt, Moeller, McDermott, Kenney and Morrell; by request of Department of Agriculture

Prefiled 1/9/2004. Read first time 01/12/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the Washington apple commission; amending RCW
2 15.24.020, 15.24.030, 15.24.040, 15.24.050, 15.24.070, 15.24.090,
3 15.24.100, 15.24.110, 15.24.160, and 15.24.190; adding new sections to
4 chapter 15.24 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The commission exists primarily for the
7 benefit of the people of the state of Washington and its economy. The
8 legislature hereby charges the commission, with oversight by the
9 director, to speak on behalf of the Washington state government with
10 regard to apples and apple-related issues.

11 **Sec. 2.** RCW 15.24.020 and 2002 c 313 s 116 are each amended to
12 read as follows:

13 There is hereby created a Washington apple commission to be thus
14 known and designated. The commission shall be composed of nine
15 practical apple producers and four practical apple dealers. ((The
16 director shall be an ex-officio member of the commission without
17 vote.)) In addition, the director shall be a full voting member of the
18 commission and may in his or her place appoint any other employee of

1 the department of agriculture as a designee to attend commission
2 meetings and otherwise represent the director and exercise the
3 director's vote.

4 The nine producer members shall be citizens and residents of this
5 state, over the age of twenty-five years, each of whom, either
6 individually or as an executive officer of a corporation, firm or
7 partnership, is and has been actually engaged in growing and producing
8 apples within the state of Washington for a period of five years,
9 currently operates a commercial producing orchard in the district
10 represented, and has during that period derived a substantial portion
11 of his or her income therefrom(~~(: PROVIDED, That he or she may own and~~
12 ~~operate an apple warehouse and pack and store apples grown by others,~~
13 ~~without being disqualified, so long as a substantial quantity of the~~
14 ~~apples handled in such warehouse are grown by him or her; and he or she~~
15 ~~may sell apples grown by himself, herself, and others so long as he or~~
16 ~~she does not sell a larger quantity of apples grown by others than~~
17 ~~those grown by himself or herself)). The four dealer members shall be~~
18 persons who, either individually or as executive officers of a
19 corporation, firm, partnership, association, or cooperative
20 organization, are and have been actively engaged as dealers in apples
21 within the state of Washington for a period of five years, and are
22 citizens and residents of this state, and are engaged as apple dealers
23 in the district represented. The qualifications of members of the
24 commission as herein set forth must continue during their term of
25 office. A person who meets the qualifications of both a producer and
26 a dealer as set forth in this section may serve as either a producer
27 member or a dealer member.

28 **Sec. 3.** RCW 15.24.030 and 1989 c 354 s 55 are each amended to read
29 as follows:

30 Thirteen persons, not including the director or the director's
31 representative, with the qualifications stated in RCW 15.24.020 shall
32 be ((elected)) members of ((said)) the commission. ((Four of the
33 grower members, being positions one, two, three and four, shall be from
34 grower district No. 1, at least one of whom shall be a resident of and
35 engaged in growing and producing apples in Okanogan county; four of the
36 grower members, being positions five, six, seven and eight, from grower
37 district No. 2; and one grower member, being position nine from grower

1 ~~district No. 3. Two of the dealer members, being positions ten and~~
2 ~~eleven, shall be from dealer district No. 1; and two of the dealer~~
3 ~~members, being positions twelve and thirteen, shall be from dealer~~
4 ~~district No. 2.~~

5 ~~The commission shall have authority in its discretion to establish~~
6 ~~by regulation one or more subdivisions of grower district No. 1 and one~~
7 ~~or more subdivisions of grower district No. 2; provided that each of~~
8 ~~the same includes a substantial apple producing district or districts,~~
9 ~~and provided the same does not result in an unfair or inequitable~~
10 ~~voting situation or an unfair or inequitable representation of apple~~
11 ~~growers on said commission. In such event each of said subdivisions~~
12 ~~shall be entitled to be represented by one of the said grower members~~
13 ~~of the commission, who shall be elected by vote of the qualified apple~~
14 ~~growers in said subdivision of said district, and who shall be a~~
15 ~~resident of and engaged in growing and producing apples in said~~
16 ~~subdivision.)) Nine of the members shall be producer members, and four~~
17 ~~shall be dealer members. The number of producer members to be~~
18 ~~appointed from each grower district shall be determined in accordance~~
19 ~~with the relative acreages of planted commercial apple orchards within~~
20 ~~the various districts as of July 1, 2003, according to the most recent~~
21 ~~census of acreages published by the United States department of~~
22 ~~agriculture, agricultural statistics service. The number of producer~~
23 ~~members to be appointed from each of the grower districts shall be~~
24 ~~subject to readjustment every ten years thereafter in accordance with~~
25 ~~the then most recent census of acreages of planted commercial apple~~
26 ~~orchards published by the United States department of agriculture,~~
27 ~~agricultural statistics service. In the event the information from the~~
28 ~~United States department of agriculture's agricultural statistics~~
29 ~~service is not published with respect to the specifically defined~~
30 ~~districts, the commission shall adopt rules to establish equitable~~
31 ~~apportionment based on the available information. However, at all~~
32 ~~times at least two producer members shall be from district 1, one of~~
33 ~~which shall be from Okanogan county; district 2 shall never have fewer~~
34 ~~than two producer members; and district 3 shall never have fewer than~~
35 ~~one producer member. The commission shall adopt rules to effect the~~
36 ~~efficient transition of reapportioned positions.~~

37 ~~The regular term of office of the members of the commission shall~~
38 ~~be three years from March 1 following their ((election)) appointment by~~

1 the director and until their successors are (~~elected and qualified~~)
2 appointed. The commission shall hold its annual meeting during the
3 month of March each year (~~for the purpose of electing officers and the~~
4 ~~transaction of other business~~) and shall hold such other meetings
5 during the year as it shall determine. The first commission meeting
6 that takes place after the effective date of this act shall be held in
7 Wenatchee, and subsequent commission meetings shall alternate between
8 Yakima and Wenatchee.

9 NEW SECTION. Sec. 4. To accomplish the transition to a commission
10 structure as set forth in RCW 15.24.030, the names of the currently
11 elected commission members shall be forwarded to the director for
12 appointment within thirty days of the effective date of this act for
13 appointment for the remainder of their current terms. Thereafter, the
14 director shall appoint commission members pursuant to the commission
15 structure set forth in RCW 15.24.030 as the current commission member
16 terms expire. As part of the transition, in order to achieve proper
17 representation of producer members relative to planted acreages, as
18 each current producer position expires the director shall appoint a
19 replacement producer member from the district then most
20 underrepresented until the initial balance of representation is
21 achieved. Notwithstanding other provisions of this chapter,
22 nominations for transitioning positions required for underrepresented
23 districts shall be made from the district to be represented by the new
24 commission member. Thereafter, reallocations shall be accomplished as
25 provided in RCW 15.24.030.

26 NEW SECTION. Sec. 5. (1) The director shall appoint the members
27 of the commission.

28 (2) Candidates for positions on the commission shall be nominated
29 to the director in accordance with subsection (3) of this section.

30 (3) Not less than sixty days nor more than seventy-five days prior
31 to the commencement of a commission member's term, the commission shall
32 cause an advisory vote to be held for the director-appointed positions.
33 Advisory ballots shall be mailed to all affected producers for producer
34 positions and to affected dealers for dealer positions and shall be
35 returned to the commission not less than thirty days prior to the
36 commencement of the term. The advisory ballot shall be conducted in a

1 manner so that it is a secret ballot. The names of the two candidates
2 receiving the most votes in the advisory vote shall be forwarded to the
3 director for potential appointment to the commission. In the event
4 only two candidates are nominated for a position, an advisory vote need
5 not be held and the candidates' names shall be forwarded to the
6 director for potential appointment. If only one candidate is nominated
7 for a position, the commission shall select a second candidate whose
8 name will be forwarded to the director.

9 (4) Any candidate whose name is forwarded to the director for
10 potential appointment shall submit to the director a letter stating why
11 he or she wishes to be appointed to the commission. The director may
12 select either person for the position or may reject both nominees and
13 request a new advisory vote with nominees selected by the commission
14 and, if desired, by the director.

15 **Sec. 6.** RCW 15.24.040 and 2002 c 313 s 117 are each amended to
16 read as follows:

17 The commission shall call a meeting of apple growers, and meetings
18 of apple dealers in dealer district No. 1 and dealer district No. 2 for
19 the purpose of nominating to the advisory ballot for nomination to the
20 director their respective members of the commission, when a term is
21 about to expire, or when a vacancy exists, except as provided in RCW
22 15.24.050, as amended, at times and places to be fixed by the
23 commission. The meetings shall be held not later than February 15th of
24 each year and insofar as practicable, the meetings of the growers shall
25 be held at the same time and place as the annual meeting of the
26 Washington state horticultural association, or the annual meeting of
27 any other producer organization which represents a majority of the
28 state's apple producers, as determined by the commission, but not while
29 the same is in actual session. Public notice of such meetings shall be
30 given by the commission in such manner as it may determine: PROVIDED,
31 That nonreceipt of the notice by any interested person shall not
32 invalidate the proceedings. Any qualified person may be nominated
33 orally for such positions at the respective meetings. Nominations may
34 also be made within five days after any such meeting by written
35 petition filed in the ((Wenatchee)) office of the commission, signed by
36 not less than five apple growers or dealers, as the case may be,

1 residing within the district or within the subdivision if the
2 nomination is made from a subdivision.

3 ~~((The members of the commission shall be elected by secret mail
4 ballot under the supervision of the director: PROVIDED, That in any
5 case where there is but one nomination for a position, a secret mail
6 ballot shall not be conducted or required and the director shall
7 certify the candidate to be elected. Grower members of))~~ Nominees to
8 be forwarded to the director for appointment to producer positions on
9 the commission shall be ~~((elected))~~ selected by a majority of the votes
10 cast by the apple growers in the respective districts ~~((or subdivisions
11 thereof, as the case may be,))~~. Each grower who operates a commercial
12 producing apple orchard within the district ~~((or subdivision))~~ being
13 represented, whether an individual proprietor, partnership, joint
14 venture, or corporation, ~~((being))~~ is entitled to one vote. As to bona
15 fide leased or rented orchards, only the lessee-operator, if otherwise
16 qualified, shall be entitled to vote. An individual commercial orchard
17 operator, if otherwise qualified, shall be entitled to vote as such,
18 even though he or she is also a member of a partnership or corporation
19 which votes for other apple acreage. ~~((Dealer members of))~~ Nominees to
20 be forwarded to the director for appointment to dealer positions on the
21 commission shall be ~~((elected))~~ selected by a majority of the votes
22 cast by the apple dealers in the respective districts, each dealer
23 being entitled to one vote. ~~((If a nominee does not receive a majority
24 of the votes on the first ballot, a run-off election shall be held by
25 mail in a similar manner between the two candidates for such position
26 receiving the largest number of votes.))~~

27 **Sec. 7.** RCW 15.24.050 and 2002 c 313 s 118 are each amended to
28 read as follows:

29 In the event a position becomes vacant due to resignation,
30 disqualification, death, or for any other reason, such position ~~((until
31 the next annual meeting))~~ shall be filled ~~((by vote of))~~ for the
32 balance of the unexpired term by appointment by the director from at
33 least two nominees submitted by the remaining members of the
34 commission. ~~((At such annual meeting a commissioner shall be elected
35 to fill the balance of the unexpired term.))~~

36 A majority of the voting members shall constitute a quorum for the

1 transaction of all business and the carrying out of the duties of the
2 commission.

3 Each member of the commission shall be compensated in accordance
4 with RCW 43.03.230 and shall be reimbursed for actual travel expenses
5 incurred in carrying out the provisions of this chapter. Employees of
6 the commission may also be reimbursed for actual travel expenses when
7 on official commission business.

8 NEW SECTION. **Sec. 8.** (1) The commission shall develop and submit
9 to the director for approval any plans, programs, and projects
10 concerning the following:

11 (a) The establishment, issuance, effectuation, and administration
12 of appropriate programs or projects within the commission's powers and
13 duties;

14 (b) The establishment and effectuation of market research projects,
15 market development projects, or both to the end that the marketing and
16 utilization of apples may be encouraged, expanded, improved, or made
17 more efficient; and

18 (c) The establishment and effectuation of, and/or support of
19 industry organizations work regarding, market access project and
20 programs, trade banner work and industry organization support.

21 (2) The director shall review the commission's programs to ensure
22 that they properly benefit the people of the state of Washington and
23 its economy and properly speak the message of the state.

24 (3) The commission, prior to the beginning of its fiscal year,
25 shall prepare and submit to the director for approval its project and
26 program plans and its budget on a fiscal period basis.

27 (4) The director shall strive to review and make a determination of
28 all submissions described in this section in a timely manner.

29 **Sec. 9.** RCW 15.24.070 and 2002 c 313 s 119 are each amended to
30 read as follows:

31 The Washington apple commission is hereby declared and created ((a
32 ~~corporate body~~)) an agency of the Washington state government. The
33 powers and duties of the commission shall include the following:

34 (1) To elect a chair and such other officers as it deems advisable;
35 and to adopt, rescind, and amend rules and orders for the exercise of

1 its powers under this chapter, which shall have the force and effect of
2 the law when not inconsistent with existing laws;

3 (2) To administer and enforce the provisions of this chapter, and
4 do all things reasonably necessary to effectuate the purposes of this
5 chapter;

6 (3) To employ and at its pleasure discharge a manager, secretary,
7 agents, attorneys, and employees as it deems necessary, and to
8 prescribe their duties and powers and fix their compensation;

9 (4) To establish offices and incur expense and enter into contracts
10 and to create such liabilities as may be reasonable for the proper
11 administration and enforcement of this chapter. Expenses may include
12 reasonable, prudent use of promotional hosting to benefit the purposes
13 of this chapter;

14 (5) To investigate and prosecute violations of this chapter;

15 (6) To conduct scientific research to develop and discover the
16 health, food, therapeutic, and dietetic value of apples and apple
17 products;

18 (7) To keep accurate record of all of its dealings, which shall be
19 open to inspection and audit by the state auditor;

20 (8) To sue and be sued (~~(, adopt a corporate seal,)~~) and have all of
21 the powers of (~~(a corporation)~~) an agency;

22 (9) To expend funds for commodity-related education, training, and
23 leadership programs as the commission deems expedient;

24 (10) To borrow money and incur indebtedness;

25 (11) To accept gifts, grants, conveyances, bequests, and devises,
26 of real or personal property, or both, in trust or otherwise, and sell,
27 lease, exchange, invest, or expend these donations or the proceeds,
28 rents, profits, and income from the donations on any appropriate
29 activity of the commission except as limited by the donor's terms. The
30 commission shall adopt rules to govern and protect the receipt and
31 expenditure of the proceeds, rents, profits, and income of all such
32 gifts, grants, conveyances, bequests, and devises. The authority to
33 make expenditures granted by this subsection includes the authority to
34 make expenditures to provide scholarships or financial assistance to
35 persons as defined in RCW 1.16.080 or entities associated with the
36 apple industry, but is not limited to the authority to make
37 expenditures for such a purpose;

1 (12) To engage in appropriate fund-raising activities for the
2 purpose of supporting the activities of the commission authorized by
3 this chapter; (~~and~~)

4 (13) To retain, discharge, or contract with, at its pleasure,
5 accountants, marketing agencies, and other professional consultants as
6 necessary, under procedures for hiring, discharging, and review as
7 adopted by the commission;

8 (14) To maintain, protect, acquire, or own intellectual property
9 rights, including without limitation, licenses, trademarks, copyrights,
10 artwork, or patents and to sell or license any or all of such rights
11 and collect royalties therefrom and from commission-funded research
12 related to apples;

13 (15) To apply for and administer federal market access programs
14 and/or similar programs or projects and provide matching funds as may
15 be necessary;

16 (16) With oversight by the director, provide funding and support to
17 organizations providing general support and leadership to and
18 representation of the apple industry;

19 (17) With oversight by the director, to speak on behalf of the
20 Washington state government on a nonexclusive basis with regard to
21 apples and apple-related issues, including but not limited to trade
22 negotiations, market access negotiations, and the like, and to fund
23 industry organizations engaging in such activities;

24 (18) To fund, conduct, or otherwise participate in scientific
25 research relating to apples, including without limitation research
26 regarding pests, pesticides, food safety, irrigation, transportation,
27 and environmental stewardship;

28 (19) To provide services relating to the production, promotion,
29 sale and/or distribution of Washington apples on a fee-for-services
30 basis. However, (a) the product of such services shall belong to the
31 funding party, and (b) the fees for such services shall include a
32 reasonable charge for the commission's overhead expenses as determined
33 by the commission; and

34 (20) To gather, maintain, and distribute data relating to the
35 production, processing, shipment, and sales of apples, in connection
36 with its ordinary operations and collection of assessments and
37 particularly in connection with services provided on a fee for service
38 basis.

1 **Sec. 10.** RCW 15.24.090 and 2002 c 313 s 122 are each amended to
2 read as follows:

3 If it appears from investigation by the director and the commission
4 that the revenue from the assessment levied on fresh apples under this
5 chapter is too high or is inadequate to accomplish the purposes of this
6 chapter, then with the oversight of the director the commission shall
7 adopt a resolution setting forth the necessities of the industry, the
8 extent and probable cost of the required research(~~(, market promotion,~~
9 ~~and advertising)) or other expenditures, the extent of public
10 convenience, interest, and necessity, and probable revenue from the
11 assessment levied. ~~((It))~~ With the oversight of the director, and
12 subject to the approval by vote of at least two-thirds for increases,
13 or a majority for decreases, of the producers voting; and approval of
14 voting producers who operate at least two-thirds for increases, or a
15 majority for decreases, of the acreage voted in the same election, the
16 commission shall thereupon decrease or increase the assessment to a sum
17 determined by the commission to be necessary for those purposes (~~based~~
18 ~~upon a rate per one hundred pounds of apples, gross billing weight,~~
19 ~~shipped in bulk, container, or any style of package or reasonable~~
20 ~~equivalent net product assessment as determined by the commission)).~~
21 However, if a different rate is determined for any specific variety or
22 for fresh apples sliced or cut for raw consumption, that different rate
23 must be applied to that variety or those sliced or cut apples. A
24 decrease or an increase becomes effective sixty days after the
25 resolution is adopted or on any other date provided for in the
26 resolution, but shall be first referred by the commission to a
27 referendum mail ballot by the apple growers of this state conducted
28 under the supervision of the director and be approved by ~~((a majority))~~
29 at least two-thirds for increases, or a majority for decreases, of the
30 growers voting on it and also be approved by voting growers who operate
31 ~~((more than fifty percent))~~ at least two-thirds for increases, or a
32 majority for decreases, of the acreage voted in the same election.
33 After the mail ballot, if favorable to the increase or decrease, the
34 commission shall nevertheless exercise its independent judgment and
35 discretion as to whether or not to approve the increase or decrease.~~

36 **Sec. 11.** RCW 15.24.100 and 2002 c 313 s 123 are each amended to
37 read as follows:

1 There is hereby levied upon all fresh apples grown annually in this
2 state, and all apples packed as Washington apples, including fresh
3 sliced, an assessment of (~~twelve cents on each one hundred pounds~~
4 ~~gross billing~~) eight and seventy-five one-hundredths cents per hundred
5 pounds of apples, based on net shipping weight, or reasonable
6 equivalent net product assessment measurement(~~(τ)~~) as determined by the
7 commission, plus such annual decreases or increases thereof as are
8 imposed pursuant to the provisions of RCW 15.24.090. All moneys
9 collected hereunder shall be expended to effectuate the purpose and
10 objects of this chapter.

11 **Sec. 12.** RCW 15.24.110 and 2002 c 313 s 124 are each amended to
12 read as follows:

13 The assessments on fresh apples shall be paid, or provision made
14 therefor satisfactory to the commission, prior to shipment, and no
15 fresh apples shall be carried, transported, or shipped by any person or
16 by any carrier, railroad, truck, boat, or other conveyance until the
17 assessment has been paid or provision made therefor satisfactory to the
18 commission.

19 The commission shall by rule prescribe the method of collection,
20 and for that purpose may require stamps to be known as "Washington
21 apple stamps" to be purchased from the commission and attached to the
22 containers, invoices, shipping documents, inspection certificates,
23 releases, or receiving receipts or tickets. Rule-making procedures
24 conducted under this section are exempt from the provisions of RCW
25 43.135.055 when adoption of the rule or rules is determined by a
26 referendum vote of the persons taxed under this chapter.

27 The commission may also collect assessments imposed under RCW
28 15.26.120, and in that event, the commission shall establish and be
29 reimbursed by the Washington tree fruit research commission an amount
30 representing a reasonable approximation of the actual costs to the
31 commission of such collection.

32 **Sec. 13.** RCW 15.24.160 and 2002 c 313 s 126 are each amended to
33 read as follows:

34 To maintain and complement the existing comprehensive regulatory
35 scheme, the commission may employ, designate as agent, act in concert
36 with, and enter into contracts with any person, council, or commission,

1 including but not limited to the director, state agencies such as the
2 Washington state fruit commission and its successors, statewide
3 horticultural associations, organizations or associations engaged in
4 tracking the movement and marketing of horticultural products, and
5 organizations or associations of horticultural growers, for the purpose
6 of promoting the general welfare of the apple industry and particularly
7 for the purpose of assisting in the sale and distribution of apples in
8 domestic or foreign commerce, and expend its funds or such portion
9 thereof as it may deem necessary or advisable for such purpose and for
10 the purpose of paying its proportionate share of the cost of any
11 program providing direct or indirect assistance to the sale and
12 distribution of apples in domestic or foreign commerce. For such
13 purposes it may employ and pay for legal counsel and contract and pay
14 for other professional services. (~~Neither the state, nor any member,~~
15 ~~agent, or employee of the commission, is liable for the acts of the~~
16 ~~commission, or upon its contracts.~~) The liability of the state for the
17 acts of the commission, or upon its contracts, shall be limited solely
18 to the assets of the commission. In any civil or criminal action or
19 proceeding for violation of any (~~rule of [or] statutory~~) statute,
20 including a rule adopted under that statute, or common law against
21 monopolies or combinations in restraint of trade, including any action
22 under chapter 19.86 RCW, proof that the act complained of was done in
23 compliance with the provisions of this chapter, and in furtherance of
24 the purposes and provisions of this chapter, is a complete defense to
25 such an action or proceeding.

26 **Sec. 14.** RCW 15.24.190 and 1987 c 393 s 4 are each amended to read
27 as follows:

28 Obligations incurred by the commission and any other liabilities or
29 claims against the commission shall be enforced only against the assets
30 of the commission, and, except to the extent of such assets, no
31 liability for the debts or actions of the commission exists against
32 either the state of Washington or any subdivision or instrumentality
33 thereof, or against any member, employee, or agent of the commission in
34 his or her individual capacity. Except as otherwise provided in this
35 chapter, neither the members of the commission nor its employees may be
36 held individually responsible for errors in judgment, mistakes, or
37 other acts, either of commission or omission, as principal, agent,

1 person, or employee, save for their own individual acts of dishonesty
2 or crime. No such person or employee may be held responsible
3 individually for any act or omission of any other member of the
4 commission. The liability of the members of the commission shall be
5 several and not joint, and no member is liable for the default of any
6 other member. This provision confirms that commissioners have been,
7 and continue to be, state officers or volunteers for purposes of RCW
8 4.92.075 and are entitled to the defenses, indemnifications,
9 limitations of liability, and other protections and benefits of chapter
10 4.92 RCW, as provided in that chapter.

11 NEW SECTION. Sec. 15. Sections 1, 4, 5, and 8 of this act are
12 each added to chapter 15.24 RCW.

13 NEW SECTION. Sec. 16. If any section, subsection, sentence,
14 clause, or part of this act is for any reason held to be invalid or
15 unconstitutional, the judicial decision does not affect the remainder
16 of this act and its application to other persons or circumstances. The
17 legislature declares that each section, subsection, sentence, clause,
18 and part of this act was enacted with the intent that if any portion of
19 this act is severed, the remainder of this act is capable of
20 accomplishing its legislative purpose.

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