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SENATE BILL 6310

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State of Washington                      58th Legislature                      2004 Regular Session

By Senators Swecker, Rasmussen and Sheahan

Read first time 01/16/2004. Referred to Committee on Agriculture.

1            AN ACT Relating to commodity commissions; and amending RCW  
2 15.66.070, 15.66.080, and 15.66.090.

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

4            **Sec. 1.** RCW 15.66.070 and 2002 c 313 s 46 are each amended to read  
5 as follows:

6            (1) Notice of a public hearing to issue, amend, or terminate a  
7 marketing order shall be published (~~((once a week))~~) for (~~((four~~  
8 ~~consecutive weeks in))~~) a period of one day in a newspaper ((or  
9 ~~newspapers, including a newspaper or newspapers))~~) of general  
10 circulation within the affected areas, (~~((as the director may~~  
11 ~~prescribe,))~~) and shall be mailed to all affected parties or affected  
12 producers. The director shall mail notice to all affected parties or  
13 affected producers, as applicable, who may be directly affected by the  
14 proposal and whose names and addresses appear on the list compiled  
15 under this chapter. The mailing must include the commission's web site  
16 address and explain that information will be posted on the web site.

17            (2) At a public hearing the director shall receive testimony  
18 offered in support of, or opposition to, the proposed issuance of,  
19 amendment to, or termination of a marketing order and concerning the

1 terms, conditions, scope, and area thereof. Such hearing shall be  
2 public and all testimony shall be received under oath. A full and  
3 complete record of all proceedings at such hearings shall be made and  
4 maintained on file in the office of the director, which file shall be  
5 open to public inspection. The director shall base any findings upon  
6 the testimony received at the hearing, together with any other relevant  
7 facts available from official publications of institutions of  
8 recognized standing. The director shall describe in the findings such  
9 official publications upon which any finding is based.

10 (3) The director shall have the power to subpoena witnesses and to  
11 issue subpoenas for the production of any books, records, or documents  
12 of any kind.

13 (4) The superior court of the county in which any hearing or  
14 proceeding may be had may compel the attendance of witnesses and the  
15 production of records, papers, books, accounts, documents and testimony  
16 as required by such subpoena. The director, in case of the refusal of  
17 any witness to attest or testify or produce any papers required by the  
18 subpoena, shall report to the superior court of the county in which the  
19 proceeding is pending by petition setting forth that due notice has  
20 been given of the time and place of attendance of the witness or the  
21 production of the papers and that the witness has been summoned in the  
22 manner prescribed in this chapter and that he or she has failed to  
23 attend or produce the papers required by the subpoena at the hearing,  
24 cause or proceeding specified in the subpoena, or has refused to answer  
25 questions propounded to him or her in the course of such hearing,  
26 cause, or proceeding, and shall ask an order of the court to compel a  
27 witness to appear and testify before the director. The court upon such  
28 petition shall enter an order directing the witness to appear before  
29 the court at a time and place to be fixed in such order and then and  
30 there to show cause why he or she has not responded to the subpoena.  
31 A copy of the order shall be served upon the witness. If it appears to  
32 the court that the subpoena was regularly issued, it shall enter an  
33 order that the witness appear at the time and place fixed in the order  
34 and testify or produce the required papers, and on failing to obey the  
35 order the witness shall be dealt with as for contempt of court.

36 **Sec. 2.** RCW 15.66.080 and 1961 c 11 s 15.66.080 are each amended  
37 to read as follows:

1           The director shall make and publish findings upon every material  
2 point controverted at the hearing and required by this chapter and upon  
3 such other matters and things as ((he)) the director may deem fitting  
4 and proper. ((He)) The director shall also issue a recommended  
5 decision based upon his or her findings ((and shall cause copies of the  
6 findings and recommended decision to be delivered or mailed to all  
7 parties of record appearing at the hearing, or their attorneys of  
8 record)). Findings and a recommended decision must be posted on the  
9 commission's web site. Affected parties who do not have internet  
10 access may request notification by mail. If the director's recommended  
11 decision does not include changes to the proposal, notification must be  
12 made by mail in the form of a postcard. If the decision includes  
13 changes to the proposal, notification must be made by mail in the form  
14 of a letter describing the changes and how to obtain copies of the full  
15 text of the order. If the commission does not have a web site,  
16 notification must be made by mail in the form of a postcard or letter,  
17 as applicable. The recommended decision shall contain the text in full  
18 of any order, or amendment or termination of existing order, and may  
19 deny or approve the proposal in its entirety, or it may recommend a  
20 marketing order containing other or different terms or conditions from  
21 those contained in the proposal: PROVIDED, That the same shall be of  
22 a kind or type substantially within the purview of the notice of  
23 hearing and shall be supported by evidence taken at the hearing or by  
24 documents of which the director is authorized to take official notice.  
25 The director shall not approve the issuance, amendment, or termination  
26 of any marketing order unless he shall find with respect thereto:

27           (1) That the proposed issuance, amendment or termination thereof is  
28 reasonably calculated to attain the objective sought in such marketing  
29 order;

30           (2) That the proposed issuance, amendment, or termination is in  
31 conformity with the provisions of this chapter and within the  
32 applicable limitations and restrictions set forth therein will tend to  
33 effectuate the declared purposes and policies of this chapter;

34           (3) That the interests of consumers of such commodity are protected  
35 in that the powers of this chapter are being exercised only to the  
36 extent necessary to attain such objectives.

37           After the issuance of a recommended decision all interested parties  
38 shall have a period of not less than ten days to file objections with

1 the director. The director shall consider the objections and shall  
2 issue his or her final decision which may be the same as the  
3 recommended decision or may be revised in the light of said objections.  
4 The final decision shall set out in full the text of the order. (~~The~~  
5 ~~director shall deliver or mail copies of the final decision to the same~~  
6 ~~parties to whom copies of the findings and recommended decision are~~  
7 ~~required to be sent~~) The final decision must be posted on the  
8 commission's web site. Affected parties who do not have internet  
9 access may request notification by mail. If there are no changes from  
10 the recommended decision, notification must be made by mail in the form  
11 of a postcard. If there are changes, notification must be made by mail  
12 in the form of a letter describing the changes and state how to obtain  
13 copies of the full text of the order. If the commission does not have  
14 a web site, notification must be made by mail in the form of a postcard  
15 or letter, as applicable. If the final decision denies the proposal in  
16 its entirety, no further action shall be taken by the director.

17 **Sec. 3.** RCW 15.66.090 and 2002 c 313 s 47 are each amended to read  
18 as follows:

19 After the issuance by the director of the final decision approving  
20 the issuance, amendment, or termination of a marketing order, the  
21 director shall determine by a referendum whether the affected parties  
22 or producers assent to the proposed action or not. The director shall  
23 conduct the referendum among the affected parties or producers based on  
24 the list as provided for in RCW 15.66.060, and the affected parties or  
25 producers shall be deemed to have assented to the proposed issuance or  
26 termination order if fifty-one percent or more by number reply to the  
27 referendum within the time specified by the director, and if, of those  
28 replying, sixty-five percent or more by number and fifty-one percent or  
29 more by volume assent to the proposed order. The producers shall be  
30 deemed to have assented to the proposed amendment order if sixty  
31 percent or more by number and sixty percent or more by volume of those  
32 replying assent to the proposed order. The determination by volume  
33 shall be made on the basis of volume as determined in the list of  
34 affected producers created under provisions of RCW 15.66.060, subject  
35 to rules and regulations of the director for such determination. The  
36 director shall consider the approval or disapproval of any cooperative  
37 marketing association authorized by its producer members to act for

1 them in any such referendum, as being the approval or disapproval of  
2 the producers who are members of or stockholders in or under contract  
3 with such association of cooperative producers: PROVIDED, That the  
4 association shall first determine that a majority of the membership of  
5 the association authorize its action concerning the specific marketing  
6 order. If the requisite assent is given, the director shall promulgate  
7 the order (~~and shall mail notices of the same to all affected~~  
8 ~~producers~~). The commission must post the order on its web site.  
9 Affected parties who do not have internet access may request  
10 notification by mail. If the commission does not have a web site,  
11 notification must be by mail.

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