

SENATE BILL REPORT

SB 5369

As Reported By Senate Committee On:
Agriculture & Rural Economic Development, March 1, 2005

Title: An act relating to the potato commission.

Brief Description: Creating the potato commission.

Sponsors: Senators Rasmussen, Schoesler, Mulliken, Sheldon, Delvin, Shin, Morton and Jacobsen.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 1/25/05, 3/1/05 [DPS].

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5369 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Schoesler, Ranking Minority Member; Delvin, Jacobsen and Morton.

Staff: Bob Lee (786-7404)

Background: Historically, commodity commissions and marketing orders have been a means for growers to finance programs that were desired by the majority of growers of the particular agricultural commodity. Some commissions perform primarily marketing programs, some perform a combination of marketing and research programs, while other commissions perform only research programs.

Currently, 24 commodity commissions are formed under Washington State law. Of these, six are formed under their own individual chapter. The remaining 18 are formed under either the 1955 or the 1961 Commodity Commission Enabling Act. The Washington Potato Commission was formed in 1956 under the 1955 enabling act, and operates pursuant to chapter 16.516 WAC.

In recent years, there have been court challenges across the nation that have objected to the use of mandatory assessments for advertising and market promotion programs alleging these programs infringe upon the constitutionally protected right to free speech. Some decisions have disallowed the use of grower assessments for advertising and market promotion programs while other courts have upheld such use based upon specific rationale and criteria. Decisions by various courts have not left consistent and clear guidance as the structure that commissions engaged in advertising and marketing programs must have to safely avoid the constitutional violation.

In recent years, the various state commodity commission laws have been changed to adapt to court rulings. Specifically in relation to commissions formed under chapter 15.66 RCW, modifications in 2002 and 2003 to the 1955 enabling act relate to three areas:

- 1) Oversight by the Department of Agriculture (Department) of the message regarding a commodity commission's advertising and market promotion program;
- 2) Review and approval by the Department of commodity commission budgets including marketing plans and research programs. The costs incurred by the Department are reimbursed by the commission; and
- 3) The process of selecting board members was modified so that the direct election by growers was transformed into an advisory vote whereby the two persons receiving the most votes would be forwarded to the director for potential appointment. Elections were administered by the Department with the costs being reimbursed by the affected commission.

Commodity commissions are in various stages of updating their administrative rules to comply with the 2002 and 2003 changes in law described above. As an alternative, the Washington Potato Commission is proposing to modify their activities by deleting authority to engage in any advertising and market promotion program in a separate but parallel chapter of law and thereby retain the direct control that it had previously over the conduct of its remaining activities.

Summary of Substitute Bill: The Washington Potato Commission previously formed under one of the state's commodity commission statutes is transferred to this new chapter of law. Excluded in the new chapter are the authorities to engage in a marketing and advertising program.

The assets and personnel from the prior Washington Potato Commission are transferred to the commission formed under this statute. Existing contracts and obligations of the prior commission remain in full force and must be preformed by the commission created under this act. Existing rules and pending business of the existing potato commission must continue to be acted upon by the potato commission formed under this act.

The existing board members continue to serve but nomination and election of new board members will be in accordance with the new chapter. The process whereby growers directly nominate and elect commission board members is re-established. Election processes including nomination and election of board members, elections to modify assessment, and elections regarding continuation or termination of the commission are conducted by the Department.

Substitute Bill Compared to Original Bill: Election processes including nomination and election of board members, elections to modify assessment, and elections regarding continuation or termination of the commission are conducted by the Department rather than the commission as proposed in the original bill. The substitute bill also provides that if a separate commodity commission is formed that includes organically grown potatoes, then potatoes that are certified as organically grown are exempt from assessments under this chapter.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2005.

Testimony For: The Washington State Potato Commission wants growers to directly elect its board members rather than having the Department be involved in appointing its members. The Potato Commission ceased its advertising and market promotion program before other commissions advertising and marketing programs were challenged. The Potato Commission no longer engages in the types of programs that necessitated greater authority and oversight by the Department. The commission has changed its focus to overcoming trade barriers and keeping market access available to sellers of Washington potatoes rather than on advertising and market promotion.

Testimony Against: None.

Who Testified: PRO: Phil Schoenig and Pat Boss, Washington State Potato Commission; Jim Jesernig, Washington Potato and Onion Association; John Stuhlmiller, Washington State Farm Bureau.