

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1254

61st Legislature
2009 Regular Session

Passed by the House February 23, 2009
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 1, 2009
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1254** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1254

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Schmick, Blake, Ormsby, Walsh, Sullivan, Parker, and Kretz)

READ FIRST TIME 02/03/09.

1 AN ACT Relating to creating the Washington grain commission;
2 amending RCW 15.04.200, 15.65.620, 15.66.270, 41.06.070, 42.56.380, and
3 43.23.033; adding a new section to chapter 66.12 RCW; adding a new
4 chapter to Title 15 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The history, economy, culture, and the
7 future of Washington state to a large degree all involve agriculture.
8 In order to develop and promote Washington's agricultural products as
9 part of the existing comprehensive scheme to regulate agricultural
10 commodities, the legislature declares:

11 (1) That the marketing of wheat and barley produced in Washington
12 is in the public interest. It is vital to the continued economic well-
13 being of the citizens of this state and their general welfare that
14 wheat and barley produced in Washington are properly promoted by:

15 (a) Enabling wheat producers and barley producers to help
16 themselves in establishing orderly, fair, sound, efficient, and
17 unhampered marketing, grading, and standardizing of the grains they
18 produce; and

1 (b) Working towards stabilizing the agricultural industries by
2 increasing consumption of wheat and barley within the state, the
3 nation, and internationally;

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

9 (3) That it is in the overriding public interest that support for
10 the wheat and barley industries be clearly expressed, that adequate
11 protection be given to the industries and their activities and
12 operations, and that wheat and barley be promoted individually and as
13 part of a comprehensive agricultural industry to:

14 (a) Enhance the reputation and image of Washington state's wheat
15 and barley;

16 (b) Increase the sale and use of Washington state's wheat and
17 barley in local, domestic, and foreign markets;

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

21 (d) Increase the knowledge of the health-giving qualities and
22 dietetic value of Washington state's wheat and barley and wheat and
23 barley products;

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

27 (4) That the commission is established primarily for the benefit of
28 the people of the state of Washington and its economy. By enacting
29 this chapter, the legislature hereby charges the commission, with
30 oversight by the director, to speak on behalf of the Washington state
31 government with regard to wheat and barley production in Washington and
32 issues related to the wheat and barley industry in Washington; and

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

36 NEW SECTION. **Sec. 2.** The wheat and barley industries are highly
37 regulated industries, and this chapter and the rules adopted under it

1 are only one aspect of the regulation of those industries. Other
2 regulations and restraints applicable to the wheat and barley
3 industries include:

- 4 (1) Chapter 15.04 RCW, Washington agriculture general provisions;
- 5 (2) Chapter 15.08 RCW, horticultural pests and diseases;
- 6 (3) Chapter 15.14 RCW, planting stock;
- 7 (4) Chapter 15.49 RCW, seeds;
- 8 (5) Chapter 15.54 RCW, fertilizers, minerals, and limes;
- 9 (6) Chapter 15.58 RCW, Washington pesticide control act;
- 10 (7) Chapter 15.64 RCW, farm marketing;
- 11 (8) Chapter 15.83 RCW, agricultural marketing and fair practices;
- 12 (9) Chapter 15.86 RCW, organic food products;
- 13 (10) Chapter 15.92 RCW, center for sustaining agriculture and
14 natural resources;
- 15 (11) Chapter 17.24 RCW, insect pests and plant diseases;
- 16 (12) Chapter 19.94 RCW, weights and measures;
- 17 (13) Chapter 20.01 RCW, agricultural products--commission
18 merchants, dealers, brokers, buyers, agents;
- 19 (14) Chapter 22.09 RCW, agricultural commodities;
- 20 (15) Chapter 43.23 RCW, department of agriculture;
- 21 (16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons
22 including provisions of Title 21 U.S.C. relating to the general
23 manufacturing practices, food labeling, food standards, food additives,
24 and pesticide tolerances;
- 25 (17) Chapter 70.94 RCW, Washington clean air act, agricultural
26 burning;
- 27 (18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and
28 rodenticide act; and
- 29 (19) 7 U.S.C., Sec. 1621, agricultural marketing act.

30
31 NEW SECTION. **Sec. 3.** The definitions in this section apply
32 throughout this chapter unless the context clearly requires otherwise.

33 (1) "Affected area" means the following counties located in the
34 state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas,
35 Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln,
36 Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and
37 Yakima.

- 1 (2) "Affected producer" means any producer who is subject to this
2 chapter.
- 3 (3) "Assessment" means the monetary amount established by the
4 commission in accordance with this chapter.
- 5 (4) "Commercial channels" means the sale of wheat or barley for use
6 as food, feed, seed, or any industrial or chemurgic use, when sold to
7 any commercial buyer, dealer, processor, cooperative, or to any person,
8 public or private, who resells any wheat or barley or product produced
9 from wheat or barley.
- 10 (5) "Commercial quantities" means five hundred or more bushels of
11 wheat or twenty tons of barley produced for market in any calendar year
12 by any producer.
- 13 (6) "Commission" means the Washington grain commission.
- 14 (7) "Department" means the department of agriculture of the state
15 of Washington.
- 16 (8) "Director" means the director of agriculture of the state of
17 Washington or any qualified person or persons designated by the
18 director of agriculture to act concerning some matter under this
19 chapter.
- 20 (9) "Grain" or "grains" means wheat and barley and includes all
21 kinds and varieties of wheat and barley grown in the state of
22 Washington.
- 23 (10) "Handler" means any person who acts, either as principal,
24 agent, or otherwise, in the processing, selling, marketing, or
25 distributing of wheat or barley that is not produced by the handler.
26 "Handler" does not include a common carrier used to transport an
27 agricultural commodity. "To handle" means to act as a handler.
- 28 (11) "Hosting" may include providing meals, refreshments, lodging,
29 transportation, gifts of a nominal value, reasonable and customary
30 entertainment, and normal incidental expenses at meetings or
31 gatherings.
- 32 (12) "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.
- 37 (13) "Marketing year" means the twelve-month period beginning June

1 1st of any year and ending on May 31st of the subsequent year. "Fiscal
2 year" means the twelve-month period beginning July 1st of any year and
3 ending on June 30th of the subsequent year.

4 (14) "Percent by numbers" means the percent of those persons on the
5 list of affected parties or affected producers.

6 (15) "Person" includes any individual, firm, corporation, limited
7 liability company, trust, association, partnership, society, or any
8 other organization of individuals, or any unit or agency of local or
9 state government.

10 (16) "Producer" means any person who is engaged in the business of
11 producing or causing to be produced for market, in commercial
12 quantities, wheat or barley grown in the designated affected area of
13 the state of Washington, and who has been so engaged in at least one of
14 the past three years. "Producer" includes a person who contracts to
15 produce or grow wheat or barley on behalf of a person who retains title
16 to the seed and its resulting agricultural product or the agricultural
17 product delivered for further production or increase. "To produce"
18 means to act as a producer.

19 (17) "Promotional hosting" means the hosting of individuals and
20 groups of individuals at meetings, meals, and gatherings for the
21 purpose of cultivating trade relations and promoting sales of wheat or
22 barley or processed wheat or barley products.

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

25 (19) "Rule-making proceedings" means rule making under chapter
26 34.05 RCW.

27 (20) "Vacancy" means that a commission member leaves or is removed
28 from a position on the commission prior to the end of a term, or a
29 nomination process for the beginning of a term concludes with no
30 candidates for a position.

31 NEW SECTION. **Sec. 4.** (1) There is hereby created the Washington
32 grain commission. The commission is composed of five wheat producer
33 members, two barley producer members, two members representing the
34 wheat industry, one member representing the barley industry, and the
35 director or his or her appointee. All members, including the director
36 or his or her appointee, are full voting members of the commission.

1 (2)(a) Each wheat producer member of the commission must be a
2 resident of Washington state, over the age of eighteen years at the
3 time of appointment, and a producer of wheat in the district in and for
4 which he or she is nominated and appointed. A wheat producer member
5 must continue to satisfy these qualifications during his or her term of
6 office.

7 (b) For the nomination and appointment of wheat producer members,
8 the affected area is divided into districts as follows:

9 (i) District I: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens
10 counties;

11 (ii) District II: Whitman county;

12 (iii) District III: Asotin, Columbia, Garfield, and Walla Walla
13 counties;

14 (iv) District IV: Adams, Chelan, Douglas, Grant, and Okanogan
15 counties; and

16 (v) District V: Benton, Franklin, Kittitas, Klickitat, and Yakima
17 counties.

18 (c) The wheat producers in each district are entitled to elect one
19 wheat producer member of the commission.

20 (3)(a) Each barley producer member of the commission must be a
21 resident of Washington state, over the age of eighteen years at the
22 time of appointment, and a producer of barley in the district in and
23 for which he or she is nominated and appointed. A barley producer
24 member must continue to satisfy these qualifications during his or her
25 term of office.

26 (b) For the nomination and appointment of barley producer members,
27 the affected area is divided into districts as follows:

28 (i) District VI: Asotin, Benton, Columbia, Franklin, Garfield,
29 Klickitat, Walla Walla, Whitman, and Yakima counties; and

30 (ii) District VII: Adams, Chelan, Douglas, Ferry, Grant, Kittitas,
31 Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

32 (c) The barley producers in each district are entitled to elect one
33 barley producer member of the commission.

34 (4) An industry member of the commission need not be a resident of
35 Washington state, but must be involved with the handling, marketing,
36 transportation, processing of, or research regarding wheat or barley
37 produced in Washington state. An industry representative member must

1 continue to satisfy these qualifications during his or her term of
2 office.

3 (5)(a) The regular term of office of each producer member of the
4 commission is three years from January 1st following his or her first
5 appointment by the director and continues until a successor is
6 appointed. The term of office for producer positions representing
7 districts I, IV, and VII is from January 1, 2011, to December 31, 2014,
8 and for three-year terms thereafter. The term of office for producer
9 positions representing districts II, III, V, and VI is from January 1,
10 2012, to December 31, 2015, and for three-year terms thereafter.

11 (b) The regular term of office of each industry representative
12 member of the commission is three years from January 1st following his
13 or her appointment by the director and until a successor is appointed.
14 The term of office for the barley industry representative position is
15 from January 1, 2011, to December 31, 2014, and for three-year terms
16 thereafter. The term of office for the wheat industry representative
17 (position 1) is from January 1, 2011, to December 31, 2014, and for
18 three-year terms thereafter. The term of office for the wheat industry
19 representative (position 2) is from January 1, 2012, to December 31,
20 2015, and for three-year terms thereafter.

21 (c) The director, or his or her appointee, is a permanent member of
22 the commission.

23 NEW SECTION. **Sec. 5.** (1) The Washington grain commission replaces
24 the Washington wheat commission and the Washington barley commission.
25 To accomplish this transition, the initial appointments to the
26 Washington grain commission are as follows:

27 (a) Within thirty days of the effective date of this section, the
28 Washington wheat commission shall forward to the director the names of
29 the currently appointed wheat producer members who shall be appointed
30 to the interim terms specified in subsection (2) of this section.
31 Thereafter, wheat producer members are nominated and appointed under
32 sections 6 and 8 of this act.

33 (b) Within thirty days of the effective date of this section, the
34 Washington barley commission shall forward to the director the names of
35 two currently appointed producer members, one who resides in and is a
36 barley producer in district VI and one who resides in and is a barley
37 producer in district VII who shall be appointed to the interim terms

1 specified in subsection (2) of this section. Thereafter, barley
2 producer members are nominated and appointed under sections 6 and 8 of
3 this act.

4 (c) Within thirty days of the effective date of this section, the
5 Washington wheat commission shall forward to the director the names of
6 the currently appointed wheat industry representative members who shall
7 be appointed to the interim terms specified in subsection (3) of this
8 section. Thereafter the director shall appoint wheat industry
9 representative members under sections 7 and 8 of this act.

10 (d) Within thirty days of the effective date of this section, the
11 Washington barley commission shall forward to the director the name of
12 one of the currently appointed barley industry representative members
13 who shall be appointed to the interim term specified in subsection (3)
14 of this section. Thereafter the director shall appoint the barley
15 industry representative member under sections 7 and 8 of this act.

16 (2) Interim terms for producer members expire as follows:

17 (a) Districts I, IV, and VII: December 31, 2010; and

18 (b) Districts II, III, V, and VI: December 31, 2011.

19 (3) Interim terms for industry representative members expire as
20 follows:

21 (a) Barley industry representative: December 31, 2010;

22 (b) Wheat industry representative (position 1): December 31, 2010;

23 and

24 (c) Wheat industry representative (position 2): December 31, 2011.

25 (4) The initial appointments under this section must be made within
26 sixty days of the effective date of this section.

27 NEW SECTION. **Sec. 6.** (1) The director shall appoint the producer
28 members of the commission.

29 (2) Candidates for producer positions on the commission must be
30 nominated to the director in accordance with this section.

31 (3)(a) The director shall mail nominating petitions for producer
32 members not earlier than September 17th and not later than October 2nd
33 in each district in which an open producer position will occur at the
34 end of the year. Each nominating petition must be signed by the
35 candidate and by at least five affected producers of the district from
36 which the nominated candidate would be appointed.

1 (b) Signed nominating petitions must be filed with the director.
2 A nominating petition is filed when it is postmarked by the deadline.

3 (c) The director shall determine the final date for filing
4 nominating petitions and shall display that final date on the face of
5 each nominating petition mailed under this subsection. The final date
6 may not be earlier than October 8th and not later than October 13th in
7 each district in which an open producer position will occur at the end
8 of the year.

9 (4)(a) The director shall prepare an advisory ballot for each
10 district in which an open producer position will occur. All candidates
11 from a district who have been nominated as a producer member in
12 accordance with subsection (3) of this section shall have their names
13 placed on the advisory ballot for that district.

14 (b) The director shall mail advisory ballots to all affected
15 producers in each district in which an open producer position will
16 occur. Advisory ballots must be mailed not earlier than October 18th
17 and not later than November 2nd in each district in which an open
18 producer position will occur at the end of the year.

19 (c) Only those completed advisory ballots may be counted that are
20 sent to the director and postmarked not later than November 25th in
21 each district in which an open producer position will occur at the end
22 of the year. Each advisory ballot must display the following language
23 on its face: "Each completed advisory ballot must be postmarked not
24 later than November 25, [insert year] to be counted."

25 (d) Each affected producer is entitled to one vote.

26 (e) The advisory vote must be conducted in a manner so that it is
27 a secret ballot.

28 (5)(a) If two or more candidates for a position are named in valid
29 petitions, an advisory vote must be held. If only one candidate for a
30 position is named in valid petitions, an advisory vote need not be
31 held, and the director may appoint that candidate or request an
32 additional candidate from the commission for appointment consideration.
33 If a candidate for a position is not named in any valid petition, the
34 commission shall submit a candidate for the director's appointment
35 consideration. Not more than one commission member may be part of the
36 same person under this chapter.

37 (b) The director may request of any candidate whose name is

1 forwarded to the director for potential appointment that the candidate
2 submit a letter stating why he or she wishes to be appointed to the
3 commission.

4 (c) If two or more candidates receive votes in an advisory vote,
5 the director may select either of the two candidates receiving the most
6 votes for the position or may reject both candidates and request a new
7 advisory vote with nominees selected by the commission and, if desired,
8 by the director. If no candidate has been nominated in a petition
9 under subsection (3) of this section, the director shall make an
10 appointment to the position as provided in section 8 of this act.

11 (6) Except for good cause shown, appointments under this section
12 must be made no later than fifteen days before the commencement of the
13 term of office of the position for which the appointment is made.

14 NEW SECTION. **Sec. 7.** (1) The director shall appoint the industry
15 representative members of the commission.

16 (2) Not later than November 1st preceding the expiration of an
17 industry representative member's term of office, the commission shall,
18 by majority vote of a quorum of the commission, select a qualified
19 candidate for the industry representative position and forward the name
20 of the candidate to the director.

21 (3) The director may select the candidate for the position or may
22 reject the candidate and request that the commission forward the name
23 of an additional candidate for appointment consideration by the
24 director.

25 (4) Except for good cause shown, appointments under this section
26 must be made no later than fifteen days before the commencement of the
27 term of office of the position for which the appointment is made.

28 NEW SECTION. **Sec. 8.** In the event of a vacancy on the commission,
29 the remaining members shall recommend to the director the name of a
30 person qualified for appointment to the vacant position. The director
31 may appoint that person for the position or may reject the candidate
32 and request that the commission forward the name of an additional
33 candidate for appointment consideration by the director.

34 NEW SECTION. **Sec. 9.** If a commission member fails or refuses to
35 perform his or her duties due to excessive absence or abandonment of

1 his or her position or engages in any acts of dishonesty or willful
2 misconduct, a majority of a quorum of the commission may recommend in
3 writing to the director that the commission member be removed from his
4 or her position on the commission. Upon receiving this recommendation,
5 the director shall review the matter, including any statement from the
6 commission member who is the subject of the recommendation, and
7 determine whether adequate cause for removal is present. If the
8 director finds that adequate cause for removal exists, the director
9 shall remove the member from his or her commission position. The
10 position is then vacant and must be filled as set forth in this
11 chapter.

12 NEW SECTION. **Sec. 10.** (1) Any member of the commission also may
13 be a member or officer of an association which has similar objectives
14 for which the agricultural commission was formed.

15 (2) An agricultural commission also may contract with such an
16 association for services necessary to carry out any purposes authorized
17 under this chapter, provided that an appropriate contract has been
18 entered into, and provided that any members with potential conflicts of
19 interest comply with applicable provisions in chapter 42.52 RCW.

20 NEW SECTION. **Sec. 11.** (1) The commission shall hold regular
21 meetings, at least quarterly, with the time, date, and place to be
22 determined prior to the new calendar year and published in the state
23 register as required in RCW 42.30.075.

24 (2) The commission may call special meetings as provided for in RCW
25 42.30.080.

26 (3) The commission shall hold an annual meeting. The proposed
27 budget must be presented for discussion at the meeting. Notice of the
28 annual meeting must be given by the commission at least ten days prior
29 to the meeting through the regular news media.

30 (4) Any action taken by the commission requires the majority vote
31 of the members present, provided a quorum is present.

32 (5) All commission meetings are open and public and must be
33 conducted in accordance with chapter 42.30 RCW.

34 NEW SECTION. **Sec. 12.** (1) A majority of the voting members

1 constitute a quorum for the transaction of all business and for
2 carrying out the duties of the commission.

3 (2) A member of the commission shall not receive any salary or
4 other compensation from the commission, except that each member of the
5 commission is compensated in accordance with RCW 43.03.230 for each day
6 spent in actual attendance at or traveling to and from meetings of the
7 commission or on special assignments for the commission, together with
8 subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and
9 43.03.060. Employees of the commission also may be reimbursed
10 subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and
11 43.03.060 when on official commission business.

12 NEW SECTION. **Sec. 13.** (1) The Washington grain commission is the
13 successor in interest to the Washington wheat commission and the
14 Washington barley commission and is vested with all powers and duties
15 transferred to it under this chapter and other such powers and duties
16 as may be authorized by law.

17 (2) All reports, documents, surveys, books, records, files, papers,
18 or written material in the possession of the Washington wheat
19 commission or Washington barley commission must be delivered to the
20 custody of the Washington grain commission. All cabinets, furniture,
21 office equipment, motor vehicles, and other tangible property owned or
22 employed by the Washington wheat commission or Washington barley
23 commission must be delivered to the Washington grain commission. The
24 Washington grain commission shall ensure the timely transfers of all
25 legal titles, registrations, and licenses made necessary by this
26 subsection. All funds, accounts, investments, credits, or other assets
27 held by the Washington wheat commission or Washington barley commission
28 must be transferred or assigned to the Washington grain commission.
29 All debts, liabilities, and obligations owed by the Washington wheat
30 commission or Washington barley commission must be transferred or
31 assigned to the Washington grain commission.

32 (3) All employees of the Washington wheat commission or Washington
33 barley commission are transferred to the Washington grain commission.

34 (4) Beginning with the final initial appointment made under section
35 5 of this act, the interim commissioners shall submit timely reports to
36 the director summarizing the progress made in completing the actions

1 required under this section and any other actions necessary to complete
2 the transition provided for in this chapter.

3 (5) When the interim commissioners have completed the actions
4 required under this section and any other actions necessary to complete
5 the transition provided for in this chapter, they shall so certify in
6 writing to the director. The Washington wheat commission and
7 Washington barley commission cease to exist as of the date that
8 certification is received by the director. Once the director has
9 received the certification, the director is authorized and shall take
10 action to repeal the marketing orders addressing wheat or barley.

11 (6) All actions required under this section must be completed by
12 the interim commissioners no later than one hundred twenty days after
13 the final initial appointment is made under section 5 of this act.

14 (7) RCW 15.66.157 and 15.66.160 do not apply to the Washington
15 wheat commission and the Washington barley commission.

16 NEW SECTION. **Sec. 14.** (1) The commission is an agency of the
17 Washington state government subject to oversight by the director. In
18 exercising its powers and duties, the commission shall carry out the
19 following purposes:

20 (a) To establish plans and conduct programs for advertising and
21 sales promotion, to maintain present markets, or to create new or
22 larger markets for wheat and barley grown in Washington;

23 (b) To engage in cooperative efforts in the domestic or foreign
24 marketing of wheat and barley grown in Washington;

25 (c) To provide for carrying on research studies to find more
26 efficient methods of production, irrigation, processing,
27 transportation, handling, and marketing of wheat and barley grown in
28 Washington;

29 (d) To adopt rules to provide for improving standards and grades by
30 defining, establishing, and providing labeling requirements with
31 respect to wheat and barely grown in Washington;

32 (e) To investigate and take necessary action to prevent unfair
33 trade practices relating to wheat and barley grown in Washington;

34 (f) To provide information or communicate on matters pertaining to
35 the production, irrigation, processing, transportation, marketing, or
36 uses of wheat and barley grown in Washington to any elected official or
37 officer or employee of any agency;

1 (g) To provide marketing information and services for producers of
2 wheat and barley in Washington;

3 (h) To provide information and services for meeting resource
4 conservation objectives of producers of wheat and barley in Washington;

5 (i) To provide for education and training related to wheat and
6 barley grown in Washington; and

7 (j) To assist and cooperate with the department or any local,
8 state, or federal government agency in the investigation and control of
9 exotic pests and diseases that could damage or affect the production or
10 trade of wheat and barley grown in Washington.

11 (2) The commission has the following powers and duties:

12 (a) To collect the assessments of producers as provided in this
13 chapter and to expend the same in accordance with this chapter;

14 (b) To maintain a list of the names and addresses of affected
15 producers that may be compiled from information used to collect
16 assessments authorized under this chapter and data on the value of each
17 producer's production for a minimum three-year period;

18 (c) To maintain a list of the names and addresses of persons who
19 handle wheat or barley within the affected area and data on the amount
20 and value of the wheat and barley handled for a minimum three-year
21 period by each person;

22 (d) To request records and audit the records of producers or
23 handlers of wheat or barley during normal business hours to determine
24 whether the appropriate assessment has been paid;

25 (e) To fund, conduct, or otherwise participate in scientific
26 research relating to wheat or barley, including but not limited to
27 research to find more efficient methods of irrigation, production,
28 processing, handling, transportation, and marketing of wheat or barley,
29 or regarding pests, pesticides, food safety, irrigation,
30 transportation, and environmental stewardship related to wheat or
31 barley;

32 (f) To work cooperatively with local, state, and federal agencies,
33 universities, and national organizations for the purposes provided in
34 this chapter;

35 (g) To establish a foundation using commission funds as grant money
36 when the foundation benefits the wheat or barley industry in Washington
37 and implements the purposes provided in this chapter;

- 1 (h) To acquire or own intellectual property rights, licenses, or
2 patents and to collect royalties resulting from commission-funded
3 research related to wheat or barley;
- 4 (i) 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 and powers provided in this chapter, including
7 specifically contracts or agreements for research described in (e) of
8 this subsection. Personal service contracts must comply with chapter
9 39.29 RCW;
- 10 (j) To institute and maintain in its own name any and all legal
11 actions necessary to carry out the provisions of this chapter,
12 including actions by injunction, mandatory injunction or civil
13 recovery, or proceedings before administrative tribunals or other
14 governmental authorities;
- 15 (k) To retain in emergent situations the services of private legal
16 counsel to conduct legal actions on behalf of the commission. The
17 retention of a private attorney is subject to review and approval by
18 the office of the attorney general;
- 19 (l) To elect a chair and other officers as determined advisable;
- 20 (m) To employ and discharge at its discretion administrators and
21 additional personnel, advertising and research agencies, and other
22 persons and firms as appropriate and pay compensation;
- 23 (n) To acquire personal property and purchase or lease office space
24 and other necessary real property and transfer and convey that real
25 property;
- 26 (o) To keep accurate records of all its receipts and disbursements
27 by commodity, which records must be open to inspection and audit by the
28 state auditor or private auditor designated by the state auditor at
29 least every five years;
- 30 (p) To borrow money and incur indebtedness;
- 31 (q) To make necessary disbursements for routine operating expenses;
- 32 (r) To expend funds for commodity-related education, training, and
33 leadership programs as the commission deems expedient;
- 34 (s) To accept and expend or retain any gifts, bequests,
35 contributions, or grants from private persons or private and public
36 agencies to carry out the purposes provided in this chapter;
- 37 (t) To apply for and administer federal market access programs or

1 similar programs or projects and provide matching funds as may be
2 necessary;

3 (u) To engage in appropriate fund-raising activities for the
4 purpose of supporting activities of the commission authorized in this
5 chapter;

6 (v) To participate in international, federal, state, and local
7 hearings, meetings, and other proceedings relating to the production,
8 irrigation, manufacture, regulation, transportation, distribution,
9 sale, or use of wheat or barley; or the regulation of the manufacture,
10 distribution, sale, or use of any pesticide, as defined in chapter
11 15.58 RCW, or any agricultural chemical which is of use or potential
12 use in producing wheat or barley. This participation may include
13 activities authorized under RCW 42.17.190, including the reporting of
14 those activities to the public disclosure commission;

15 (w) To speak on behalf of the Washington state government on a
16 nonexclusive basis regarding issues related to wheat and barley,
17 including but not limited to trade negotiations and market access
18 negotiations and to fund industry organizations engaging in those
19 activities;

20 (x) To adopt, rescind, and amend rules and regulations reasonably
21 necessary for the administration and operation of the commission and
22 the enforcement of its duties under this chapter;

23 (y) To administer, enforce, direct, and control the provisions of
24 this chapter and any rules adopted under this chapter; and

25 (z) Other powers and duties that are necessary to carry out the
26 purposes of this chapter.

27 NEW SECTION. **Sec. 15.** (1) The commission shall develop and submit
28 to the director for approval any plans, programs, and projects
29 concerning the following:

30 (a) The establishment, issuance, effectuation, and administration
31 of appropriate programs or projects for the advertising and promotion
32 of wheat and barley; and

33 (b) The establishment and effectuation of market research projects,
34 market development projects, or both, to the end that the marketing and
35 utilization of wheat and barley may be encouraged, expanded, improved,
36 or made more efficient.

1 (2) The director shall review the commission's advertising or
2 promotion program to ensure that no false claims are being made
3 concerning any agricultural commodity.

4 (3) The commission, prior to the beginning of its fiscal year,
5 shall prepare and submit to the director for approval its research
6 plan, its commodity-related education and training plan, and its budget
7 on a fiscal period basis.

8 (4) The director shall review and make a determination of all
9 submissions described in this section in a timely manner.

10 NEW SECTION. **Sec. 16.** (1) Except as provided in subsection (2) of
11 this section, all rule-making proceedings conducted under this chapter
12 must be in accordance with chapter 34.05 RCW.

13 (2) Rule-making proceedings conducted under this chapter are exempt
14 from compliance with RCW 34.05.310 and 43.135.055 and chapter 19.85
15 RCW, the regulatory fairness act, when the proposed rule is subject to
16 a referendum.

17 (3) Rules, regulations, and orders made by the commission must be
18 filed with the director and become effective as provided in RCW
19 34.05.380.

20 NEW SECTION. **Sec. 17.** (1) The commission may receive donations of
21 liquor produced from wheat or barley grown in Washington and may use
22 the liquor for the promotional purposes specified in subsection (2) of
23 this section.

24 (2) The commission may engage directly or indirectly in the
25 promotion of liquor produced from wheat or barley grown in Washington
26 including, without limitation, the acquisition in any lawful manner and
27 the dissemination without charge of the liquor. This dissemination is
28 not deemed a sale for any purpose and the commission is not deemed a
29 producer, supplier, or manufacturer, or the clerk, servant, or agent of
30 a producer, supplier, distributor, or manufacturer under Title 66 RCW.
31 This dissemination without charge may be solely for agricultural
32 development or trade promotion, and not for fund-raising purposes under
33 section 14(2)(u) of this act. Dissemination for promotional purposes
34 may include promotional hosting and must in the good faith judgment of
35 the commission be in the aid of the marketing, advertising, or

1 promotion of wheat or barley grown in Washington, or research related
2 to that marketing, advertising, or promotion.

3 (3) The commission shall adopt rules governing promotional hosting
4 expenditures by its employees, agents, or commission members under RCW
5 15.04.200.

6 NEW SECTION. **Sec. 18.** A new section is added to chapter 66.12 RCW
7 to read as follows:

8 The Washington grain commission created under section 4 of this act
9 may purchase or receive donations of liquor produced from wheat or
10 barley grown in Washington and may use the liquor for the promotional
11 purposes specified in section 17(2) of this act. Liquor furnished to
12 the commission under this section which is used within the state is
13 subject to the taxes imposed under RCW 66.24.210. A license, permit,
14 or bond is not required of the Washington grain commission under this
15 title for the promotional purposes specified in section 17(2) of this
16 act.

17 NEW SECTION. **Sec. 19.** (1) The restrictive provisions of chapter
18 43.78 RCW do not apply to promotional printing and literature for the
19 commission.

20 (2) All promotional printing contracts entered into by the
21 commission must be executed and performed under conditions of
22 employment that substantially conform to the laws of this state
23 respecting hours of labor, the minimum wage scale, and the rules and
24 regulations of the department of labor and industries regarding
25 conditions of employment, hours of labor, and minimum wages, and the
26 violation of such a provision of any contract is grounds for
27 cancellation of the contract.

28 NEW SECTION. **Sec. 20.** (1) All money received by the commission
29 from the assessment levied under this chapter and all moneys
30 transferred to the commission under section 13(2) of this act must be
31 deposited in the banks designated by the commission and disbursed by
32 order of the commission. RCW 43.01.050 does not apply to money
33 collected under this chapter.

34 (2) The commission shall adopt rules or establish policies as it

1 determines necessary to ensure proper accounting and disbursement of
2 moneys received and held by the commission.

3 NEW SECTION. **Sec. 21.** Unless covered by a blanket bond covering
4 officials or employees of the state of Washington, every administrator,
5 employee, or other person occupying a position of trust for the
6 commission and every commission member actually handling or drawing
7 upon funds shall give a bond in the penal amount as may be required by
8 the commission, the premium for which bond or bonds must be paid by the
9 commission.

10 NEW SECTION. **Sec. 22.** (1) Obligations incurred by the commission
11 and any other liabilities or claims against the commission are
12 enforceable only against the assets of the commission and, except to
13 the extent of those assets, liability for the debts or actions of the
14 commission does not exist against either the state of Washington or any
15 subdivision or instrumentality thereof or against any member, employee,
16 or agent of the commission or the state of Washington in his or her
17 individual capacity.

18 (2) Except as otherwise provided in this chapter, neither the
19 commission members, nor its employees, may be held individually
20 responsible for errors in judgment, mistakes, or other acts, either of
21 commission or omission, as principal, agent, person, or employee,
22 except for their own individual acts of dishonesty or crime. A person
23 or employee may not be held individually responsible for any act or
24 omission of any other commission members. The liability of the
25 commission members is several and not joint, and a member is not liable
26 for the default of any other member. This subsection confirms that
27 commission members have been and continue to be state officers or
28 volunteers for purposes of RCW 4.92.075 and are entitled to the
29 defenses, indemnifications, limitations of liability, and other
30 protections and benefits of chapter 4.92 RCW.

31 (3) In any civil or criminal action or proceeding for violation of
32 any statute, including a rule adopted under that statute, or common law
33 against monopolies or combinations in restraint of trade, including any
34 action under chapter 19.86 RCW, proof that the act complained of was
35 done in compliance with the provisions of this chapter, and in

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

3 NEW SECTION. **Sec. 23.** Copies of the proceedings, records, and
4 acts of the commission, when certified by the chair, are admissible in
5 any court as prima facie evidence of the truth of the statements
6 contained therein.

7 NEW SECTION. **Sec. 24.** (1) Under RCW 42.56.380, certain
8 agricultural business records, commission records, and department of
9 agriculture records relating to the commission and producers of
10 agricultural commodities are exempt from public disclosure.

11 (2) Financial and commercial information and records submitted to
12 either the department or the commission for the purpose of
13 administering this chapter may be shared between the department and the
14 commission. They may also be used, if required, in any suit or
15 administrative hearing involving this chapter.

16 (3) This section does not prohibit:

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

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

23 NEW SECTION. **Sec. 25.** (1) The commission shall reimburse the
24 department for all costs incurred by the department for actions
25 necessary to carry out this chapter, including the adoption of rules,
26 facilitating or conducting nominations or advisory votes, and the
27 review and approval required under section 15 of this act.

28 (2) The director may provide by rule for a method to fund staff
29 support for all commodity boards or commissions in accordance with RCW
30 43.23.033 if a position is not directly funded by the legislature and
31 costs are related to the specific activity undertaken on behalf of an
32 individual commodity board or commission. The commission shall provide
33 funds to the department according to the rules adopted by the director.

1 NEW SECTION. **Sec. 26.** (1) The commission shall prepare a list of
2 all producers of wheat and a list of all producers of barley, which
3 must include for each producer his or her name and address and the
4 amount, by unit, of wheat or barley produced during the past three
5 years.

6 (2) The commission shall prepare a list of all persons who handle
7 wheat and all persons who handle barley, which must include for each
8 handler his or her name and address and the amount, by unit, of wheat
9 or barley handled during the past three years.

10 (3) It is the responsibility of each producer or handler to ensure
11 that his or her correct address is filed with the commodity commission
12 and to submit production data and handling data to the commission as
13 prescribed in this chapter.

14 (4) Any qualified person may, at any time, have his or her name
15 placed upon any list for which he or she qualifies by delivering or
16 mailing the information to the commission. The lists must be corrected
17 and brought up-to-date in accordance with evidence and information
18 provided to the commission.

19 (5) For all purposes of giving notice, conducting advisory votes,
20 and holding referenda, the applicable list corrected up to the day
21 preceding the date the list is certified by the commission is the list
22 of all affected producers entitled to notice or to vote. Inadvertent
23 failure to notify an affected producer does not invalidate a proceeding
24 conducted under this chapter.

25 (6) At the director's request when conducting a referendum for the
26 commission, the commission shall provide the director a certified list
27 of affected producers from the commission records. The list must
28 include all information required by the director to conduct a
29 referendum under this chapter, must be used to determine assent as
30 provided in this chapter, and must be kept in the rule-making file by
31 the director.

32 NEW SECTION. **Sec. 27.** (1)(a) The initial annual assessments are
33 the amounts most recently approved by referendum by wheat producers and
34 barley producers and effective at the time the grain commission is
35 established:

36 (i) The initial annual assessment on wheat is three-fourths of one
37 percent of the net receipts at the first point of sale;

1 (ii) The initial annual assessment on barley is one percent of the
2 net receipts at the first point of sale.

3 (b) The initial annual assessments established in this subsection
4 are effective unless and until changed pursuant to the procedure in
5 subsection (2) of this section.

6 (2)(a) If the commission determines, based on information available
7 to it, that the revenue from the assessment levied on wheat or barley
8 under this chapter is too high or is inadequate to accomplish the
9 purposes of this chapter, then with the oversight of the director the
10 commission shall adopt a resolution setting forth the needs of the
11 industry, the extent and probable cost of the commission activities
12 identified as necessary to address the needs of the industry together
13 with a brief statement justifying each activity, the proposed new
14 assessment rate, and the expected revenue from the proposed assessment
15 levied. The resolution must be submitted to the director for review
16 and approval.

17 (b) If the director objects to the proposed new assessment rate,
18 the director shall explain the reasons for the objection to the
19 commission in writing. The commission may adopt a revised resolution
20 and submit it to the director for review and approval.

21 (c) Upon receiving the director's approval and with the director's
22 oversight, the commission may conduct a referendum to determine whether
23 affected producers assent to the proposed new assessment rate, or may
24 refer the matter to the director to conduct the referendum on behalf of
25 the commission. Only wheat producers may vote on a proposed new
26 assessment rate on wheat, and only barley producers may vote on a
27 proposed new assessment rate on barley.

28 (i) The producers have assented to the new rate if more than fifty
29 percent by number and more than fifty percent by volume of those
30 replying assent. The determination by volume is made on the basis of
31 volume as determined in the list of affected producers created under
32 section 26 of this act.

33 (ii) Results of the referendum must be communicated via the news
34 media.

35 (iii) If the requisite assent is given, the commission shall adopt
36 the new rate at its next meeting. The new rate must be adopted by rule
37 in accordance with chapter 34.05 RCW, except as provided in section 16
38 of this act.

1 (3)(a) Notwithstanding the provisions in subsection (2) of this
2 section, the commission may, by majority vote of a quorum of its
3 members, adopt a finding that its current revenue substantially exceeds
4 that needed to support the current needs of the industry and the
5 current cost of commission activities and order a temporary reduction
6 in the annual assessments below the rate currently authorized under
7 subsection (1) of this section.

8 (b) With the director's approval, such a reduction commences on
9 July 1st following the commission's action and expires automatically on
10 June 30th of the subsequent year unless extended by a new action of the
11 commission under this subsection.

12 (c) Any action taken under this subsection must be communicated to
13 affected producers via the news media and any other means it deems
14 effective.

15 (4) The annual assessment authorized in this chapter may not exceed
16 three percent of the total market value of all affected units sold,
17 processed, stored, or delivered for sale, processing, or storage by all
18 affected producers of wheat or barley during the year to which the
19 assessment applies.

20 NEW SECTION. **Sec. 28.** (1) The collection of the assessment made
21 and levied by the commission must be paid by the producer upon all
22 commercial quantities of wheat and all commercial quantities of barley
23 sold, processed, stored, or delivered for sale, processing, or storage
24 by the producer. However, an assessment may not be levied or collected
25 on wheat or barley grown and used by the producer for feed, seed, or
26 personal consumption.

27 (2) Handlers including warehousemen, processors, and feedlots
28 receiving wheat or barley in commercial quantities from producers shall
29 collect the assessment made and levied by the commission from each
30 producer whose production they handle and remit the assessment to the
31 commission on a monthly basis. Affected units of wheat or barley must
32 not be transported, carried, shipped, sold, stored, or otherwise
33 handled or disposed of until every due and payable assessment under
34 this chapter has been paid and the receipt issued, but liability under
35 this chapter does not attach to common carriers in the regular course
36 of their business.

1 (3) Any due and payable assessment levied under this chapter
2 constitutes a personal debt of every person so assessed or who
3 otherwise owes the assessment, and the assessment is due and payable to
4 the commission on a monthly basis. In the event any person fails to
5 pay the full amount of such an assessment, the commission may add to
6 the unpaid assessment an amount not exceeding ten percent of the unpaid
7 assessment to defray the cost of enforcing the collecting of the unpaid
8 assessment. In the event of failure of the person or persons to pay
9 any due and payable assessment, the commission may bring a civil action
10 against the person or persons in a state court of competent
11 jurisdiction for the collection thereof, together with the additional
12 ten percent, and the action must be tried and judgment rendered as in
13 any other cause of action for debt due and payable. Venue for an
14 action against a person owing a due and payable assessment to the
15 commission is in Spokane county or a county in which the person
16 produces or handles wheat or barley.

17 NEW SECTION. **Sec. 29.** (1) All moneys collected or otherwise
18 received by the commission under this chapter must be used solely by
19 and for the commission and may not be used for any other commission or
20 the department, except as otherwise provided in this chapter. These
21 moneys must be deposited in accounts in the name of the commission in
22 any bank which is a state depository. All expenses and disbursements
23 incurred and made under this chapter must be paid from moneys collected
24 and received under this chapter without the necessity of a specific
25 legislative appropriation, and all moneys deposited for the account of
26 any order must be paid from the account by check or voucher in the
27 form and in the manner and upon the signature of the person as may be
28 prescribed by the commission. RCW 43.01.050 is not applicable to such
29 an account or any moneys so received, collected, or expended.

30 (2) The commission shall ensure that the expenditure of assessments
31 collected from wheat producers and moneys transferred from the wheat
32 commission under section 13(2) of this act are used for purposes
33 related to the wheat industry and that the expenditure of assessments
34 collected from barley producers and moneys transferred from the barley
35 commission under section 13(2) of this act are used for purposes
36 related to the barley industry. However, this section does not prevent
37 assessments from wheat, assessments from barley, and moneys transferred

1 from the wheat commission or barley commission under section 13(2) of
2 this act to be combined or used together for activities, projects, and
3 other endeavors that benefit both the wheat and barley industries.

4 NEW SECTION. **Sec. 30.** (1) Any funds of the commission may be
5 invested in savings or time deposits in banks, trust companies, and
6 mutual savings banks that are doing business in the United States, up
7 to the amount of insurance afforded those accounts by the federal
8 deposit insurance corporation.

9 (2) This section applies to all funds which may be lawfully so
10 invested, which in the judgment of the commission are not required for
11 immediate expenditure. The authority granted by this section is not
12 exclusive and is cumulative and in addition to other authority provided
13 by law for the investment of the funds including, but not limited to,
14 authority granted under chapters 39.58, 39.59, and 43.84 RCW.

15 NEW SECTION. **Sec. 31.** (1) To prove eligibility to vote or hold a
16 position on the commission, each producer must show records of sales of
17 commercial quantities of wheat or barley sold within the past three
18 years if requested by the commission.

19 (2) Each handler shall keep a complete and accurate record of all
20 wheat and barley handled.

21 (3) Handlers' records must be in the form and contain the
22 information as the commission may by rule prescribe, must be preserved
23 for a period of three years, and are subject to inspection at any time
24 upon demand of the commission or its agents.

25 (4) The commission through its agents may enter and inspect the
26 premises and records of any handler of wheat or barley for the purpose
27 of enforcing this chapter. The commission has the authority to issue
28 subpoenas for the production of books, records, documents, and other
29 writings of any kind from any handler and from any person having,
30 either directly or indirectly, actual or legal control of or over the
31 premises, books, records, documents, or other writings, for the purpose
32 of enforcing this chapter or rules adopted under this chapter.

33 (5) All information furnished to or acquired by the commission or
34 by an agent of the commission under this section must be kept
35 confidential by all officers, employees, and agents of the commission,
36 except as may be necessary in a suit or other legal proceeding brought

1 by, on behalf of, or against the commission or its employees or agents
2 involving the enforcement of this chapter or rules adopted under this
3 chapter.

4 (6) This section does not prohibit:

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

8 (b) The publication by the commission or the director of the name
9 of any person violating this chapter or rules adopted under this
10 chapter, together with a statement of the particular provisions and the
11 manner of the violation.

12 NEW SECTION. **Sec. 32.** (1) It is a misdemeanor for any person
13 willfully to:

14 (a) Violate or aid in the violation of this chapter or rules
15 adopted under this chapter;

16 (b) Submit a false or fraudulent report, statement, or record
17 required by the director or the commission under this chapter or rules
18 adopted under this chapter; or

19 (c) Fail or refuse to submit a report, statement, or record
20 required by the director or the commission under this chapter or rules
21 adopted under this chapter.

22 (2) In the event of a violation or threatened violation of this
23 chapter or rules adopted under this chapter, the director or the
24 commission is entitled to an injunction in a court of competent
25 jurisdiction to prevent further violation and to a decree of specific
26 performance, and to a temporary restraining order and injunction
27 pending litigation.

28 (3) In the event of a violation or threatened violation of this
29 chapter or rules adopted under this chapter, the director, the
30 commission, or any affected producer on joining the commission may
31 refer the violation to the prosecutor in any county in which the
32 defendant or any defendant resides, or in which the violation was
33 committed, or in which the defendant or any defendant has his or her
34 principal place of business.

35 (4) The superior courts are hereby vested with jurisdiction to
36 enforce this chapter and the rules of the commission issued under this
37 chapter, and to prevent and restrain violations of this chapter.

1 **Sec. 33.** RCW 15.04.200 and 2006 c 330 s 24 are each amended to
2 read as follows:

3 (1) Under the authority of Article VIII of the state Constitution
4 as amended, agricultural commodity commission expenditures for
5 agricultural development or trade promotion and promotional hosting by
6 an agricultural commodities commission under chapters 15.24, 15.28,
7 15.44, 15.65, 15.66, 15.88, 15.89, 15.-- (the new chapter created in
8 section 40 of this act), and 16.67 RCW shall be pursuant to specific
9 budget items as approved by the agricultural commodity commission at
10 the annual public hearings on the agricultural commodity commission
11 budget.

12 (2) Agricultural commodity commissions shall adopt rules governing
13 promotional hosting expenditures by agricultural commodity commission
14 employees, agents or commissioners. The rules shall identify officials
15 and agents authorized to make expenditures and the objectives of the
16 expenditures. Individual agricultural commodity commission
17 commissioners shall make promotional hosting expenditures, or seek
18 reimbursements for these expenditures, only in those instances where
19 the expenditures have been approved by the agricultural commodity
20 commission. All payments and reimbursements shall be identified and
21 supported on vouchers.

22 (3) Agricultural commodity commissions shall be exempt from the
23 requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW.

24 **Sec. 34.** RCW 15.65.620 and 1961 c 256 s 62 are each amended to
25 read as follows:

26 Nothing in this chapter shall apply to nor alter nor change any
27 provision of the statutes of the state of Washington relating to the
28 apple (~~(advertising)~~) commission (RCW 15.24.010-15.24.210 inclusive),
29 to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive),
30 (~~(or)~~) to dairy products commission (RCW 15.44.010-15.44.180
31 inclusive), or to (~~(wheat)~~) the grain commission (~~((RCW 15.63.010-~~
32 ~~15.63.920 inclusive))~~) (chapter 15.-- (the new chapter created in
33 section 40 of this act)). No marketing agreement or order containing
34 any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be
35 issued with respect to the respective commodities affected by said
36 statutes unless and until any commission established by any such
37 statute shall cease to perform the provisions of its respective

1 statute. The provisions of this chapter shall have no application to
2 any marketing agreement or order issued pursuant to the Washington
3 agricultural enabling act of 1955 (chapter 15.66 RCW); except that any
4 such marketing agreement or order issued pursuant to said 1955 act may
5 be brought under this chapter upon compliance with the provisions of
6 this chapter relating to amendments of marketing agreements and orders,
7 whereupon:

8 (1) The provisions of this chapter shall apply to and the
9 provisions of said 1955 act shall cease to apply to such marketing
10 agreement or order; and

11 (2) All assets and liabilities of, or pertaining to such agreement
12 or order, and of any commission or agency established by it, shall
13 continue to exist with respect to such agreement, order, commission or
14 agency after being so brought under this chapter.

15 **Sec. 35.** RCW 15.66.270 and 2007 c 234 s 100 are each amended to
16 read as follows:

17 This chapter does not apply to any provision of the statutes of the
18 state of Washington relating to the Washington apple commission
19 (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28
20 RCW), ~~((or))~~ to the dairy products commission (chapter 15.44 RCW), or to
21 the Washington grain commission (chapter 15.-- RCW (the new chapter
22 created in section 40 of this act)). Marketing agreements or orders
23 shall not be issued with respect to apples, soft tree fruits, ~~((or))~~
24 dairy products, or wheat or barley for the purposes specified in RCW
25 15.66.030 (1) or (2).

26 **Sec. 36.** RCW 41.06.070 and 2002 c 354 s 209 are each amended to
27 read as follows:

- 28 (1) The provisions of this chapter do not apply to:
- 29 (a) The members of the legislature or to any employee of, or
30 position in, the legislative branch of the state government including
31 members, officers, and employees of the legislative council, joint
32 legislative audit and review committee, statute law committee, and any
33 interim committee of the legislature;
 - 34 (b) The justices of the supreme court, judges of the court of
35 appeals, judges of the superior courts or of the inferior courts, or to

1 any employee of, or position in the judicial branch of state
2 government;

3 (c) Officers, academic personnel, and employees of technical
4 colleges;

5 (d) The officers of the Washington state patrol;

6 (e) Elective officers of the state;

7 (f) The chief executive officer of each agency;

8 (g) In the departments of employment security and social and health
9 services, the director and the director's confidential secretary; in
10 all other departments, the executive head of which is an individual
11 appointed by the governor, the director, his or her confidential
12 secretary, and his or her statutory assistant directors;

13 (h) In the case of a multimember board, commission, or committee,
14 whether the members thereof are elected, appointed by the governor or
15 other authority, serve ex officio, or are otherwise chosen:

16 (i) All members of such boards, commissions, or committees;

17 (ii) If the members of the board, commission, or committee serve on
18 a part-time basis and there is a statutory executive officer: The
19 secretary of the board, commission, or committee; the chief executive
20 officer of the board, commission, or committee; and the confidential
21 secretary of the chief executive officer of the board, commission, or
22 committee;

23 (iii) If the members of the board, commission, or committee serve
24 on a full-time basis: The chief executive officer or administrative
25 officer as designated by the board, commission, or committee; and a
26 confidential secretary to the chair of the board, commission, or
27 committee;

28 (iv) If all members of the board, commission, or committee serve ex
29 officio: The chief executive officer; and the confidential secretary
30 of such chief executive officer;

31 (i) The confidential secretaries and administrative assistants in
32 the immediate offices of the elective officers of the state;

33 (j) Assistant attorneys general;

34 (k) Commissioned and enlisted personnel in the military service of
35 the state;

36 (l) Inmate, student, part-time, or temporary employees, and part-
37 time professional consultants, as defined by the Washington personnel
38 resources board;

1 (m) The public printer or to any employees of or positions in the
2 state printing plant;

3 (n) Officers and employees of the Washington state fruit
4 commission;

5 (o) Officers and employees of the Washington state apple
6 (~~(advertising)~~) commission;

7 (p) Officers and employees of the Washington state dairy products
8 commission;

9 (q) Officers and employees of the Washington tree fruit research
10 commission;

11 (r) Officers and employees of the Washington state beef commission;

12 (s) Officers and employees of the Washington grain commission;

13 (t) Officers and employees of any commission formed under chapter
14 15.66 RCW;

15 (~~(+t)~~) (u) Officers and employees of agricultural commissions
16 formed under chapter 15.65 RCW;

17 (~~(+u)~~) (v) Officers and employees of the nonprofit corporation
18 formed under chapter 67.40 RCW;

19 (~~(+v)~~) (w) Executive assistants for personnel administration and
20 labor relations in all state agencies employing such executive
21 assistants including but not limited to all departments, offices,
22 commissions, committees, boards, or other bodies subject to the
23 provisions of this chapter and this subsection shall prevail over any
24 provision of law inconsistent herewith unless specific exception is
25 made in such law;

26 (~~(+w)~~) (x) In each agency with fifty or more employees: Deputy
27 agency heads, assistant directors or division directors, and not more
28 than three principal policy assistants who report directly to the
29 agency head or deputy agency heads;

30 (~~(+x)~~) (y) All employees of the marine employees' commission;

31 (~~(+y)~~) (z) Staff employed by the department of community, trade,
32 and economic development to administer energy policy functions and
33 manage energy site evaluation council activities under RCW
34 43.21F.045(2)(m);

35 (~~(+z)~~) (aa) Staff employed by Washington State University to
36 administer energy education, applied research, and technology transfer
37 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

1 (2) The following classifications, positions, and employees of
2 institutions of higher education and related boards are hereby exempted
3 from coverage of this chapter:

4 (a) Members of the governing board of each institution of higher
5 education and related boards, all presidents, vice presidents, and
6 their confidential secretaries, administrative, and personal
7 assistants; deans, directors, and chairs; academic personnel; and
8 executive heads of major administrative or academic divisions employed
9 by institutions of higher education; principal assistants to executive
10 heads of major administrative or academic divisions; other managerial
11 or professional employees in an institution or related board having
12 substantial responsibility for directing or controlling program
13 operations and accountable for allocation of resources and program
14 results, or for the formulation of institutional policy, or for
15 carrying out personnel administration or labor relations functions,
16 legislative relations, public information, development, senior computer
17 systems and network programming, or internal audits and investigations;
18 and any employee of a community college district whose place of work is
19 one which is physically located outside the state of Washington and who
20 is employed pursuant to RCW 28B.50.092 and assigned to an educational
21 program operating outside of the state of Washington;

22 (b) The governing board of each institution, and related boards,
23 may also exempt from this chapter classifications involving research
24 activities, counseling of students, extension or continuing education
25 activities, graphic arts or publications activities requiring
26 prescribed academic preparation or special training as determined by
27 the board: PROVIDED, That no nonacademic employee engaged in office,
28 clerical, maintenance, or food and trade services may be exempted by
29 the board under this provision;

30 (c) Printing craft employees in the department of printing at the
31 University of Washington.

32 (3) In addition to the exemptions specifically provided by this
33 chapter, the director of personnel may provide for further exemptions
34 pursuant to the following procedures. The governor or other
35 appropriate elected official may submit requests for exemption to the
36 director of personnel stating the reasons for requesting such
37 exemptions. The director of personnel shall hold a public hearing,
38 after proper notice, on requests submitted pursuant to this subsection.

1 If the director determines that the position for which exemption is
2 requested is one involving substantial responsibility for the
3 formulation of basic agency or executive policy or one involving
4 directing and controlling program operations of an agency or a major
5 administrative division thereof, the director of personnel shall grant
6 the request and such determination shall be final as to any decision
7 made before July 1, 1993. The total number of additional exemptions
8 permitted under this subsection shall not exceed one percent of the
9 number of employees in the classified service not including employees
10 of institutions of higher education and related boards for those
11 agencies not directly under the authority of any elected public
12 official other than the governor, and shall not exceed a total of
13 twenty-five for all agencies under the authority of elected public
14 officials other than the governor.

15 The salary and fringe benefits of all positions presently or
16 hereafter exempted except for the chief executive officer of each
17 agency, full-time members of boards and commissions, administrative
18 assistants and confidential secretaries in the immediate office of an
19 elected state official, and the personnel listed in subsections (1)(j)
20 through ~~((+u))~~ (v) and ~~((+x))~~ (y) and (2) of this section, shall be
21 determined by the director of personnel. Changes to the classification
22 plan affecting exempt salaries must meet the same provisions for
23 classified salary increases resulting from adjustments to the
24 classification plan as outlined in RCW 41.06.152.

25 Any person holding a classified position subject to the provisions
26 of this chapter shall, when and if such position is subsequently
27 exempted from the application of this chapter, be afforded the
28 following rights: If such person previously held permanent status in
29 another classified position, such person shall have a right of
30 reversion to the highest class of position previously held, or to a
31 position of similar nature and salary.

32 Any classified employee having civil service status in a classified
33 position who accepts an appointment in an exempt position shall have
34 the right of reversion to the highest class of position previously
35 held, or to a position of similar nature and salary.

36 A person occupying an exempt position who is terminated from the
37 position for gross misconduct or malfeasance does not have the right of
38 reversion to a classified position as provided for in this section.

1 **Sec. 37.** RCW 42.56.380 and 2007 c 177 s 1 are each amended to read
2 as follows:

3 The following information relating to agriculture and livestock is
4 exempt from disclosure under this chapter:

5 (1) Business-related information under RCW 15.86.110;

6 (2) Information provided under RCW 15.54.362;

7 (3) Production or sales records required to determine assessment
8 levels and actual assessment payments to commodity boards and
9 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
10 15.66, 15.74, 15.88, 15.-- (the new chapter created in section 40 of
11 this act), 15.100, 15.89, and 16.67 RCW or required by the department
12 of agriculture to administer these chapters or the department's
13 programs;

14 (4) Consignment information contained on phytosanitary certificates
15 issued by the department of agriculture under chapters 15.13, 15.49,
16 and 15.17 RCW or federal phytosanitary certificates issued under
17 C.F.R. 353 through cooperative agreements with the animal and plant
18 health inspection service, United States department of agriculture, or
19 on applications for phytosanitary certification required by the
20 department of agriculture;

21 (5) Financial and commercial information and records supplied by
22 persons (a) to the department of agriculture for the purpose of
23 conducting a referendum for the potential establishment of a commodity
24 board or commission; or (b) to the department of agriculture or
25 commodity boards or commissions formed under chapter 15.24, 15.28,
26 15.44, 15.65, 15.66, 15.74, 15.88, 15.-- (the new chapter created in
27 section 40 of this act), 15.100, 15.89, or 16.67 RCW with respect to
28 domestic or export marketing activities or individual producer's
29 production information;

30 (6) Except under RCW 15.19.080, information obtained regarding the
31 purchases, sales, or production of an individual American ginseng
32 grower or dealer;

33 (7) Information that can be identified to a particular business and
34 that is collected under RCW 15.17.140(2) and 15.17.143 for certificates
35 of compliance;

36 (8) Financial statements provided under RCW 16.65.030(1)(d);

37 (9) Information submitted by an individual or business for the
38 purpose of participating in a state or national animal identification

1 system. Disclosure to local, state, and federal officials is not
2 public disclosure. This exemption does not affect the disclosure of
3 information used in reportable animal health investigations under
4 chapter 16.36 RCW once they are complete; and

5 (10) Results of testing for animal diseases not required to be
6 reported under chapter 16.36 RCW that is done at the request of the
7 animal owner or his or her designee that can be identified to a
8 particular business or individual.

9 **Sec. 38.** RCW 43.23.033 and 2006 c 330 s 27 are each amended to
10 read as follows:

11 (1) The director may provide by rule for a method to fund staff
12 support for all commodity boards and commissions if a position is not
13 directly funded by the legislature.

14 (2) Staff support funded under this section (~~and~~), RCW
15 15.65.047(1)(c), 15.66.055(3), 15.24.215, 15.26.265, 15.28.320,
16 15.44.190, 15.88.180, 15.89.150, and 16.67.190, and chapter 15.-- RCW
17 (the new chapter created in section 40 of this act) shall be limited to
18 one-half full-time equivalent employee for all commodity boards and
19 commissions.

20 NEW SECTION. **Sec. 39.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 40.** Sections 1 through 17, 19 through 32, and
25 39 of this act constitute a new chapter in Title 15 RCW.

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