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**SUBSTITUTE HOUSE BILL 1254**

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**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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