

recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice.

Passed the Senate February 18, 1961.

Passed the House March 1, 1961.

Approved by the Governor March 8, 1961.

CHAPTER 87.

[S. B. 305.]

STATE WHEAT COMMISSION.

AN ACT establishing the state wheat commission; providing for an assessment to be laid upon wheat; prescribing penalties; specifying circumstances of taking effect; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. It is in the public interest of all the people to protect the reputation and welfare of the wheat industry of this state. Without a commission to represent it, the wheat industry cannot effectively help itself in developing foreign and domestic markets, in promoting research to better the quality of Washington wheat, or in protecting the consumer by maintaining proper grades and standards. A wheat commission is vitally necessary to improve the competitive position of Washington wheat producers with respect to states already having such commissions, and to assist these producers in obtaining a fair return from their labor, their farms and the wheat they produce. Such a commission must be endowed with such authority as will enable it to cope swiftly and effectively with our rapidly changing economic conditions as they may affect the wheat industry. Therefore this act of the legislature is passed to establish a wheat commission, composed of wheat producers familiar with

Wheat commission act.

Legislative declaration of purposes.

the complex problems peculiar to the industry, and designed to carry out the purposes of the act as herein set forth, under the supervision of the director of agriculture. The provisions of this act are enacted in the exercise of the police powers of this state for the broad purpose of protecting the health and economic welfare not only of the wheat industry, but of labor and industry dependent upon wheat, and of the people of the state as a whole.

Definitions.

SEC. 2. As used in this act, the following terms shall have the following meanings:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representatives.

(2) "Person" means any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals.

(3) "Producer" means any person engaged in the business of producing wheat, or having an interest in the production of wheat for market in commercial quantities.

(4) "Commercial quantities" means five-hundred or more bushels of wheat produced for market in any calendar year by any producer.

(5) "Wheat" means all kinds and varieties of wheat grown in the state of Washington.

(6) "Wheat commission" and "commission" are synonymous and mean the commission established pursuant to the provisions of this act.

(7) "Fiscal year" means the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive.

(8) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing wheat which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall

include any lending agency for a commodity credit corporation loan to producers.

(9) "Commercial channels" means the sale of wheat for use as food, feed, seed or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat, or products produced from wheat.

SEC. 3. The purposes of this act are:

Purposes
enumerated.

(1) To enable wheat producers of Washington with the aid of the state to help themselves in developing foreign and domestic markets.

(2) To provide methods and means for the development of new and larger markets for wheat grown within Washington.

(3) To carry on educational and promotional programs to help develop markets for Washington wheat.

(4) To provide methods and means for participation in whatever federal or other programs have been or may be established to make available gifts or grants for the promotion of marketing of Washington wheat in foreign countries.

(5) To promote and assist in carrying into effect production research into such matters as the development of superior varieties of wheat; methods by which yield in wheat may be increased; disease and the development of disease-resistant varieties of wheat; and more efficient means of processing, handling and marketing of wheat.

(6) To investigate and make recommendations against trade practices detrimental to the wheat industry.

(7) To promote the maintenance of uniform grades and standards suitable to marketing needs and adequate to protect the consumer.

SEC. 4. There is hereby created the Washington state wheat commission. The commission shall be

Commission
created.

composed of five members who shall be producers elected as provided in section 6 and two members who shall be appointed by the producer members so elected. The director shall be an ex officio member of the commission without vote.

The members of the commission shall be citizens and residents of the state and over the age of twenty-five years. The elective producer members shall be producers of wheat in the district in and for which they are nominated and elected. The qualifications of members of the commission must continue during their term of office.

Districts
enumerated.

SEC. 5. For the purposes of this act, the state of Washington is divided into five districts as follows:

(1) District 1: The counties of Ferry, Lincoln, Pend Oreille, Spokane, and Stevens;

(2) District 2: The county of Whitman;

(3) District 3: The counties of Asotin, Columbia, Garfield, and Walla Walla;

(4) District 4: The counties of Adams, Chelan, Douglas, Grant, and Okanogan;

(5) District 5: All other counties of the state of Washington, including the counties of Western Washington and the counties of Benton, Franklin, Kittitas, Klickitat, and Yakima in Eastern Washington.

From each district a producer member shall be elected to the commission.

Terms of
commission
members.

SEC. 6. The term of office for each member shall be three years from the date of election and until his successor is elected and qualified, except, however, that the first terms of the initial elective producer members of the commission whose terms begin on December 31, 1961 shall be as follows: Terms of members from districts 1 and 2 shall terminate December 31, 1962; terms of members from districts 3 and 4 shall terminate December 31, 1963; and terms

of members from district 5 shall terminate December 31, 1964.

The two appointed members of the commission shall be elected to terms of three years by a majority vote of the elected producer members at the first commission meeting, except, however, that the term of the member first appointed during the meeting shall terminate December 31, 1963, and the term of the remaining appointed member shall terminate December 31, 1964. Thereafter such positions shall be filled by majority vote of the elected producer members at the last meeting held prior to termination of term of office.

SEC. 7. Nominations to fill vacancies in the commission shall be made by written petition signed by not less than five wheat producers residing in the district wherein the vacancy will occur. Nominating petitions shall be sent by the director upon request to any wheat producer residing in such district. Such petitions shall be sent not earlier than September 17 and not later than October 2. Nominating petitions must be filed with the director not earlier than October 8 and not later than October 13.

Nomination,
election, of
commission
members.

Members of the commission shall be elected by secret mail ballot under supervision of the director. Ballots shall be mailed not earlier than October 18 and not later than November 2 to all wheat producers listed in the district where a vacancy will occur. They shall be returned to the director post-marked not later than November 16.

In establishing a list of producers, the director shall use the most current and complete list on file in the state department of agriculture. For any areas of the state for which such a list is not complete or current, the director may establish a supplementary list in the following manner: He shall publish a notice to wheat producers in the area involved, requiring them to file with the director a

certified report showing the producer's name, mailing address, and the yearly average quantity of wheat produced by him in the five years preceding the date of the notice or in such lesser time as the producer has produced wheat. The notice shall be published once a week for four consecutive weeks in one or more newspapers of general circulation within the district. All reports shall be filed with the director within twenty days from the last date of publication of the notice, or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep his list of producers at all times as current and complete as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by him.

Members of the commission shall be elected by a majority of votes cast by the wheat producers residing in the district, each producer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

The nomination and election of the initial members of the commission whose terms of office commence on December 31, 1961 shall be in accordance with the procedure set forth in this section.

The director shall provide reasonable public notice of the impending vacancy in each district in which a vacancy may occur, such notice to consist at a minimum of publication once a week for four consecutive weeks in one or more newspapers of general circulation within the district, and shall call for nominations in such notice: *Provided*, That non-receipt of the notice by any interested person shall not invalidate the election.

SEC. 8. In the event that by reason of the contingency specified in section 26, this act shall take effect between August 17, 1961 and February 28, 1962, the nomination and election procedures for the first election of the commission shall be postponed so that the assessment authorized by this act may be made on the 1962 wheat crop. Should this occur nominating petitions shall be sent by the director not earlier than the 17th day of the month following the month in which the act takes effect. From that time, nomination and election procedures shall continue on a time schedule parallel to that specified in sections 6 and 7. Terms of office of commission members shall begin on the last day of the month bearing the same relation to the month in which the earliest nominating petitions are filed as December does to September. Terms of office of commission members elected under the emergency procedure set forth in this section shall terminate as set forth in section 6, without change as a result of the adoption of such procedure.

Contingency nomination, election, of commission members.

SEC. 9. (1) In the event that an elective position becomes vacant because of failure to qualify, resignation, disqualification, removal, death, or for any other reason, such position shall be filled by majority vote of the remaining members of the commission until an election can be held in the manner provided for in section 7. At such election a commissioner shall be elected to fill the balance of the unexpired term.

Filling vacancy, commission membership.

(2) In the event that a nonelective position becomes vacant for reasons other than expiration of the term of office, the position shall be filled for the balance of the unexpired term by majority vote of the remaining members of the commission at the first meeting following the occurrence of the vacancy.

SEC. 10. A member of the commission may be removed by the director for malfeasance, misfeas-

Removal of commission members.

ance or neglect of duty, after being given a copy of written charges and an opportunity to be heard publicly. In addition to other causes, failure to retain the qualifications for holding office is sufficient cause for removal.

Expenses of
commission
members.

SEC. 11. Members of the commission shall receive no salary, but each member shall receive the sum of twenty dollars for each day actually spent in attendance at or in traveling to and from meetings of the commission, or on special assignment for the commission, together with subsistence and travel expenses at the rate allowed by law to state employees.

Commission
organization.

SEC. 12. (1) The commission shall meet as soon as practicable for the purpose of organizing. Thereafter the commission shall meet at least once every three months regularly at such time and place as shall be fixed by resolution of the commission.

(2) The commission shall hold an annual meeting for the presentation of an annual report and proposed budget. Notice of time and place of the annual meeting shall be given by the commission at least ten days prior thereto through notification sent to the regular wire services, newspapers, and radio, and television stations.

(3) The commission shall establish by resolution, the time, place and manner of calling special meetings. Reasonable notice of such meetings shall be given to each commission member and to the public.

(4) Five members shall constitute a quorum. Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(5) The procedure followed by the commission shall be governed in all applicable respects by the provisions of chapter 34.04 RCW, the Administrative

Procedure Act, as in force on the effective date of this act, or as thereafter amended.

(6) The commission shall, by resolution, establish and maintain an office where books, records, and minutes shall be kept.

(7) All meetings of the commission shall be open to the public. All of its records, books and minutes shall be available for public inspection.

SEC. 13. The director shall attend each meeting of the commission, and shall retain the right to approve or disapprove every order, rule or directive issued by the commission or any action taken by it, such approval or disapproval to be based on whether or not he believes the order, rule, or directive in question to have been issued in conformity with the purposes of this act and the powers granted to effectuate them. The decision of the director shall be final, subject to the judicial review authorized by section 24 of this act.

Director
review of
commission
action.

SEC. 14. (1) Consistently with the general purposes of this act, it shall be the duty of the commission to establish the policies to be followed in the effectuation of its provisions.

Commission
powers and
duties.

(2) In the administration of this act the commission shall have the following particular duties and powers:

(a) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties;

(b) To administer, enforce, direct and control the provisions of this act;

(c) To establish plans and conduct programs for education, advertising and sales promotion for the purposes of maintaining present markets, to create new or larger markets for wheat grown in the state of Washington, and to promote improved public

understanding of the problems confronting the wheat industry;

(d) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of wheat;

(e) To make studies and recommendations for the improvement of standards and grades of wheat;

(f) To investigate, report and recommend the correction of policies and practices detrimental to the Washington wheat industry;

(g) To collect the assessments of producers as provided for in this act and to expend the same in accordance with the purposes and provisions thereof;

(h) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this act during each fiscal year;

(i) To accept and receive gifts and grants and expend the same;

(j) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms as it may deem appropriate to assist it in carrying out the purposes of this act: *Provided*, That any attorney selected must be approved by the attorney general.

(k) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(l) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organization or agencies for the purposes specified in this act;

(m) To employ, designate as agent, act in concert with, and enter into contracts with any person,

council, or commission, whether domestic or foreign, whenever such action is not prohibited by law, for the purpose of promoting the general welfare of the wheat industry, and particularly for the purpose of assisting in the sale and distribution of wheat in domestic or foreign commerce; and to expend its funds, or such portion thereof as it may deem advisable for such purpose, and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of wheat in foreign countries;

(n) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this act;

(o) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by agencies of the state;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To establish an interest bearing reserve fund in any bank selected by the commission which is an approved state depository, if, in the opinion of the commission, the establishment of such a fund will further the purposes of this act;

(s) To exercise all express and implied rights, powers and authority that may be necessary to perform and carry out the expressed purposes of this act, and all of the purposes reasonably implied incidentally thereto, and lawfully connected therewith.

SEC. 15. It is hereby assessed and levied and the commission shall collect an assessment at the rate of one-fourth cent per bushel upon the sale or dis-

Assessments
on wheat.

position of all wheat grown in this state and sold through commercial channels, such assessment to be used for the benefit of the wheat industry as provided in this act. The assessment shall begin with and include wheat harvested in the crop of the fiscal year 1962, and shall include each and every crop thereafter. It shall be levied and assessed to the producer at the time of sale, and shall be deducted by the first purchaser from the price paid to the producer at the time of sale, or, in the case of a pledge or mortgage of wheat as a security for a loan under any federal price support program or otherwise, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan, at the time the loan is made by the agency or person making the loan. The assessment shall be deducted as provided in this section whether the wheat is stored in this or any other state. No assessment shall be levied or collected on wheat grown and used by the producer for feed, seed or personal consumption. The assessment constitutes a lien prior to all other liens and encumbrances upon such wheat.

Collection of
assessments,
method

SEC. 16. The commission shall by rule or regulation prescribe the method of collection of the assessment, and for that purpose may require handlers receiving wheat from the producer, including warehousemen and processors, to collect producer assessments from producers whose wheat they handle and remit the same to the commission.

Producer,
handler,
records.

SEC. 17. Each producer and handler shall keep a complete and accurate record of all wheat grown, handled, shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule and regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents.

Each producer and handler shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of wheat handled, shipped, or processed by him during the period prescribed by the commission. The return shall contain such further information as the commission shall require.

The commission may inspect the records of any producer or handler during reasonable business hours for the purpose of enforcing this act and the collection of the assessment.

SEC. 18. At the end of each fiscal year, the commission shall credit each producer with any amount over one dollar paid by such producer in excess of one-fourth cent per bushel of wheat. Refund may be made upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the commission.

Refunds on assessments.

SEC. 19. The commission shall appoint a secretary-treasurer who shall file with it a bond executed by a surety company authorized to transact surety business in the state of Washington, in favor of the commission and the state, in the penal sum of fifty thousand dollars, guaranteeing the faithful performance of his duties and strict accounting of all funds of the commission.

Secretary-treasurer of commission—Bond.

SEC. 20. All moneys received or collected by the commission, or by any other state official from the assessment herein levied or from any other source in accordance with the terms and provisions of this act, shall be paid to the secretary-treasurer, deposited in such banks, which are approved state depositories, as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall be applicable to any moneys received or collected under the terms

Disposition of moneys received.

of this act. Moneys received or collected hereunder shall be used only to pay for costs and expenses incurred in effectuating the provisions and purposes of this act.

Liability for
commission
obligations or
actions.

SEC. 21. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee or agent of the commission in his individual capacity. Except as otherwise provided in this act, neither the members of the commission nor its employees shall be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member shall be liable for the default of any other member.

Violation,
misdemeanor.

SEC. 22. Any person who violates or aids in the violation of any provision of this act, or any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor.

Intergovern-
mental aid in
enforcement.

SEC. 23. All county and state enforcement officers and all employees and agents of the department of agriculture shall aid in the enforcement of this act. The superior courts are vested with jurisdiction to enforce the provisions thereof, and the rules and regulations issued thereunder, and to prevent and restrain violations thereof. The commission may bring in its own name an action to enjoin the

Injunctive
process
available.

violation or threatened violation of any provision of this act, or any rules adopted under this act, notwithstanding the existence of any other remedy at law, and for cause shown may obtain upon prompt hearing a temporary or permanent injunction restraining any person from such violation or threatened violation. Any prosecution brought under this act may be instituted in any county of which the defendant, or any defendant, is a resident, or in which the violation was committed, or in which the defendant, or any defendant, has his principal place of business.

SEC. 24. Any party aggrieved by any order, rule or regulation issued by the commission, or by any action taken by it, or by any action taken by the director in approving or disapproving any action of the commission, may apply to the superior court of the state of Washington in the county in which such party is a resident or has his principal place of business for a review of such decision. Where applicable, the procedure for such a review shall be that specified in chapter 34.04 RCW, the Administrative Procedure Act, as in force on the effective date of this act, or as thereafter amended. The court may thereupon take such action as in its opinion the law requires and its decision shall be appealable to the supreme court of this state subject to the laws and rules of court relating to appeals.

Appeals—
Venue—
Procedure.

SEC. 25. If any section, sentence, clause, or word of this act shall be held to be unconstitutional, the invalidity of such section, sentence, clause, or word shall not affect the validity of any other provisions of this act, it being the intent of the legislature to enact the remainder of this act, notwithstanding the unconstitutionality of any such part.

Severability.

SEC. 26. This act shall not take effect and become operative unless and until such time as the wheat commission created by the Marketing Order for

Effective date

Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, is declared in a final decision of the supreme court of the state of Washington to have been invalidly created either by reason of the unconstitutionality, in whole or in part, of said chapter or for any other reason. This act has been passed in order that continuity of wheat commission activities may be assured throughout the biennium and in the future; therefore, in the event the existing wheat commission should be held by the supreme court of the state of Washington to have been constitutionally and validly created, this act shall be of no force and effect whatsoever.

Emergency,
contingent.

SEC. 27. Should the wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, be declared to have been unconstitutionally or invalidly created this act will become necessary for the preservation of the public peace, health and safety, and the support of the state government and its existing public institutions, and upon the occurrence of that contingency, shall take effect immediately.

Passed the Senate February 9, 1961.

Passed the House March 1, 1961.

Approved by the Governor March 8, 1961.