

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 389

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO POTATO COMMISSION; AMENDING SECTION 22-1202, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING THE IDAHO POTATO COMMISSION;
3 AMENDING SECTION 22-1204, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE
4 TECHNICAL CORRECTIONS; AND AMENDING SECTION 22-1207, IDAHO CODE, TO
5 REVISE PROVISIONS REGARDING POWERS AND DUTIES OF THE IDAHO POTATO COM-
6 MISSION.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 22-1202, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 22-1202. POTATO COMMISSION CREATED. (1) There is hereby created and
12 established in the department of self-governing agencies the "Idaho potato
13 commission" to be composed of nine (9) practical potato persons, resident
14 citizens of the state of Idaho for a period of three (3) years prior to their
15 appointment, each of whom has had active experience in growing, or shipping,
16 or processing of potatoes produced in the state of Idaho. Commissioners
17 shall serve at the pleasure of the governor. At least five (5) members of
18 said commission shall be growers who are actually now engaged in the produc-
19 tion of potatoes. Two (2) of the members shall be shippers who are actually
20 now engaged in the shipping of potatoes, and two (2) of the members shall be
21 processors who are actually now engaged in the processing of potatoes. The
22 qualifications for members of said commission as above required shall con-
23 tinue throughout their respective terms of office. ~~Three (3) growers shall~~
24 ~~be nominated for each grower vacancy that occurs, from which the governor~~
25 ~~shall appoint one (1). Two (2) grower commissioners shall be appointed from~~
26 ~~the district known as District No. 1, consisting of the counties of Oneida,~~
27 ~~Franklin, Bear Lake, Caribou, Bannock, Power, Bingham, Bonneville, Teton,~~
28 ~~Madison, Jefferson, Fremont, Clark, Butte, Custer, and Lemhi; one (1) grower~~
29 ~~commissioner shall be appointed from the district known as District No. 2A,~~
30 ~~consisting of the counties of Twin Falls, Jerome, Lincoln, Camas, Elmore,~~
31 ~~Boise, Valley, and Gooding; one (1) grower commissioner shall be appointed~~
32 ~~from the district known as District No. 2B, consisting of the counties of~~
33 ~~Cassia, Minidoka, Blaine, Custer and Lemhi; and one (1) grower commissioner~~
34 ~~shall be appointed from the district known as District No. 3, consisting of~~
35 ~~the counties of Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho,~~
36 ~~Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner,~~
37 ~~and Boundary.~~

38 (2) For purposes of grower commissioner nomination and appointment,
39 four (4) districts shall be recognized. District 1 shall be divided into
40 subdistricts 1A and 1B. Subdistrict 1A shall consist of the following coun-
41 ties: Canyon, Owyhee, Payette, Boundary, Bonner, Kootenai, Shoshone,
42 Benewah, Latah, Clearwater, Nez Perce, Lewis, Idaho, Adams, Washington,

1 Gem, and Ada. Subdistrict 1B shall consist of the following counties: Good-
2 ing, Jerome, Twin Falls, Elmore, Lincoln, Lemhi, Boise, Camas, Valley,
3 and Custer. District 2 shall consist of the following counties: Cassia,
4 Minidoka, Blaine, and Butte. District 3 shall consist of the following coun-
5 ties: Madison, Jefferson, Fremont, Bonneville, Teton, and Clark. District
6 4 shall consist of the following counties: Bingham, Power, Bannock, Oneida,
7 Franklin, Bear Lake, and Caribou.

8 (a) Three (3) growers shall be nominated for each grower vacancy that
9 occurs, from which the governor shall appoint one (1). For district 1,
10 at least one (1) of the three (3) nominees shall be from a subdistrict
11 1A county and one (1) shall be from a subdistrict 1B county. The third
12 nominee may be from either subdistrict 1A or 1B. Provided, however, fol-
13 lowing a good faith effort, in the event a qualified nominee from sub-
14 district 1A cannot be identified for the subdistrict 1A nomination, the
15 nominee may be chosen from subdistrict 1B, and, following a good faith
16 effort, in the event a qualified nominee from subdistrict 1B cannot be
17 identified for the subdistrict 1B nomination, the nominee may be chosen
18 from subdistrict 1A.

19 (b) One (1) grower commissioner shall be appointed from the district
20 known as district 1, one (1) grower commissioner shall be appointed from
21 the district known as district 2, one (1) grower commissioner shall be
22 appointed from the district known as district 3, and one (1) grower com-
23 missioner shall be appointed from the district known as district 4. The
24 fifth grower commissioner shall serve at large and shall be nominated
25 from district 3 or 4.

26 (c) Grower commissioners serving terms on the effective date of this
27 act shall continue to serve out their terms.

28 (3) Three (3) shippers shall be nominated for each shipper vacancy that
29 occurs, from which the governor shall appoint one (1). Shipper commis-
30 ioners do not necessarily need to be nominated from geographical areas.

31 (4) Three (3) processors shall be nominated for each processor vacancy
32 that occurs, from which the governor shall appoint one (1). Processor com-
33 missioners do not necessarily need to be nominated from geographical areas.

34 (5) Nominations must be made thirty (30) days prior to appointment. All
35 nominations must give equal consideration to all who are eligible for ap-
36 pointment as defined in this ~~act~~ chapter. The Idaho potato commission shall
37 hold separate meetings of the growers, shippers, or processors, as the nomi-
38 nations to be made shall require, in the various districts, to determine who
39 shall be nominated for appointment. Notice of said meetings shall be given
40 by publication in one (1) newspaper published in each county of the district
41 or districts in which said nominations are to be made, and the notice shall be
42 published in two (2) issues of each newspaper, the first to be approximately
43 thirty (30) days and the second approximately ten (10) days before said meet-
44 ing. The notice shall state the purpose, time and place of said meeting. All
45 meetings held for the selection of nominees shall be held prior to March 31 of
46 the year the appointment or appointments are to be made.

47 (6) The term of office shall be three (3) years and no commissioner
48 shall serve more than two (2) consecutive terms. The commissioners shall
49 elect a chairman for a term of one (1) year.

1 (7) Vacancies shall be filled as terms expire. Each of such commission-
 2 ers shall hold office until his successor has been appointed and qualified.
 3 The term of office shall commence on September 15 of the year of appointment
 4 and expire on ~~September 14~~ August 31 of the last year of the term of office.

5 (8) A majority of the members of said commission shall constitute a quo-
 6 rum for the transaction of all business and the carrying out of the duties of
 7 said commission. Before entering on the discharge of their duties as members
 8 of said commission, each member shall take and subscribe to the oath of of-
 9 fice prescribed for state officers.

10 (9) Each member of the commission shall be compensated as provided by
 11 section 59-509(j), Idaho Code, provided however, that compensation paid to
 12 members of the commission from and after April 1, 1992, shall not be consid-
 13 ered salary as defined in section 59-1302(31), Idaho Code.

14 SECTION 2. That Section 22-1204, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 22-1204. DEFINITIONS. As used in this ~~act~~ chapter:

17 1. The term "commission" means the Idaho potato commission.

18 2. The term "person" means an individual, partnership, corporation,
 19 association, grower and/or any other business unit.

20 3. The term "potatoes" means and includes only potatoes sold or in-
 21 tended for human consumption and grown in the state of Idaho.

22 4. "Shipment" of potatoes shall be deemed to take place when the pota-
 23 toes are loaded within the state of Idaho, in a car, bulk, truck or other con-
 24 veyance in which the potatoes are to be transported for sale or otherwise.

25 5. The term "dealer" means and includes any person engaged in the busi-
 26 ness of buying, receiving, processing, or selling potatoes for profit or re-
 27 muneration.

28 6. The term "shipper" means and includes one who is properly licensed
 29 under federal and state laws, and actively engaged in the packing and ship-
 30 ping of potatoes in the primary channel of trade in interstate commerce in
 31 the state of Idaho, ~~or who does not provide the primary management to a grow-~~
 32 ~~ing or processing operation, and who ships more than he produces~~ is actively
 33 engaged in the packing and shipping of potatoes in the primary channel of
 34 trade in interstate commerce in the state of Idaho that are primarily pro-
 35 duced by his farming operation. This definition shall not be used for any
 36 purpose other than determining qualifications for Idaho potato commission
 37 positions.

38 7. The term "grower" means one who is actively engaged in the growing
 39 of potatoes on five (5) or more acres in the state of Idaho, ~~and who does not~~
 40 ~~provide the primary management to a shipping or processing operation. This~~
 41 definition shall not be used for any purpose other than determining qualifi-
 42 cations for Idaho potato commission positions.

43 8. Potatoes shall be deemed to be delivered into the primary channel of
 44 trade when any such potatoes are sold or delivered for shipment, or delivered
 45 for canning and/or processing into by-products.

46 9. The term "hundredweight" means each one hundred (100) pound unit or
 47 combination of packages making a one hundred (100) pound unit of any shipment
 48 of potatoes based on invoice and/or bill of lading records.

1 10. The term "processor" means a person who is actively engaged in the
2 processing of potatoes in the state of Idaho for human consumption. This
3 definition shall not be used for any purpose other than determining qualifi-
4 cations for Idaho potato commission positions.

5 11. The term "processing" means changing the form of potatoes from the
6 raw or natural state into a product for human consumption.

7 12. The term "handler" means and includes any person processing pota-
8 toes or handling them in the primary channel of trade.

9 13. The term "tax" means an assessment levied on potatoes covered by
10 this ~~act~~ chapter for the sole purpose of financing, on behalf of the potato
11 industry in Idaho, the commission's activities in carrying out the purposes
12 of this ~~act~~ chapter.

13 Notwithstanding any other provision of law to the contrary, the commis-
14 sion shall not be authorized to promulgate rules relating to the amendments
15 to the definitions of the terms "shipper," "grower," and "processor" as pro-
16 vided for in this ~~act~~ chapter for a period of one (1) year from the effective
17 date of this ~~act~~ chapter.

18 SECTION 3. That Section 22-1207, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 22-1207. POWERS AND DUTIES OF COMMISSION. The powers and duties of the
21 commission shall include the following:

22 (1) To adopt and from time to time alter, rescind, modify and ~~or~~ amend
23 all proper and necessary rules and orders for the exercise of its powers and
24 the performance of its duties under this chapter, including the calling of
25 any referendum by those paying the potato tax as deemed necessary by the com-
26 mission and supported by at least six (6) commissioners, one (1) of whom must
27 be a shipper commissioner and one (1) of whom must be a processor commis-
28 sioner.

29 (2) To contract and be contracted with.

30 (3) To employ and at its pleasure discharge agents, personnel, and such
31 other help as it deems necessary and to outline their powers and duties and
32 fix their compensation.

33 (4) To make in the name of the commission such agreements as may be nec-
34 essary.

35 (5) To keep books, records and accounts of all its doings, which books,
36 records and accounts shall be open to inspection by the state controller at
37 all times.

38 (6) To purchase or authorize the purchase of all office equipment and
39 supplies and to incur all other reasonable and necessary expenses and obli-
40 gations in connection with and required for the proper carrying out of the
41 provisions of this chapter.

42 (7) To cooperate with any local, state or national organization or
43 agency, whether voluntary or created by the law of any state, or the United
44 States government, engaged in work or activity similar to the work and activ-
45 ities of the commission, and to enter into contracts and agreements with such
46 organizations or agencies for carrying on a joint campaign of research, ed-
47 ucation, product protection, promotion and reciprocal enforcement of these
48 objectives.

1 (8) To investigate and prosecute in the name of the state of Idaho vi-
2 olations of this chapter or any suit or action for the collection of fees,
3 taxes or penalties as hereinafter provided, or to protect brands, marks,
4 packages, brand names, trademarks, certification marks or other intellec-
5 tual property rights being promoted or used by the commission.

6 (9) To lease, purchase or own the real or personal property deemed nec-
7 essary in the administration of this chapter.

8 (10) To define and describe such grade or grades of potatoes in accor-
9 dance with the provisions of this chapter.

10 (11) To define and designate the character of the brands, labels, sten-
11 cils, or other distinctive marks under which said potatoes may be promoted in
12 order to secure the greatest returns to producers.

13 (12) To devise and require the application of either a seal, label,
14 brand, package, or any other suitable device that will protect the identity
15 of the original Idaho pack of potatoes as near to the final consumer as pos-
16 sible.

17 (13) Whenever and wherever it deems it to be necessary, the commission
18 shall use its offices to prevent any substitution of other potatoes for Idaho
19 potatoes and to prevent the misrepresentation, mislabeling or the misbrand-
20 ing of Idaho potatoes at any and all times at any and all points where they
21 discover the same is being done and to require the disclosure of the growing
22 area of origin upon potato containers by all persons doing business in the
23 state of Idaho.

24 (14) To require all those using any of the Idaho potato trade or certifi-
25 cation marks, or handling or packing potatoes grown in Idaho, to execute an
26 agreement in the form prescribed by the commission to ensure compliance with
27 the provisions of this chapter.

28 (15) To devise a suitable system for tracking shipments of Idaho pota-
29 toes and Idaho potato products to prevent the misrepresentation, mislabel-
30 ing or the misbranding of Idaho potatoes.

31 (16) To prevent the unlicensed use of the Idaho potato trade or certifi-
32 cation marks including, but not limited to, the marks "Grown in Idaho," "Fa-
33 mous Idaho Potatoes" and "Idaho Potatoes."

34 (17) To make, conduct or carry on studies and research in connection
35 with the raising, production and promotion of potatoes, including study and
36 research dealing with the industrial and other uses of potatoes and their
37 byproducts, and the extension and stabilization of markets for such commodi-
38 ties; to disseminate information with respect to such study and research as a
39 part of the commission's promotional activities authorized by this chapter
40 and to assist, aid and educate growers, dealers and handlers in the raising,
41 production and promotion of potatoes.

42 (18) To require all persons with their principal place of business lo-
43 cated in the state of Idaho to pay a one hundred dollar (\$100) annual license
44 fee for use of any Idaho potato trade or certification mark and to require all
45 persons with their principal place of business located outside of the state
46 of Idaho to pay a three hundred dollar (\$300) annual license fee for use of
47 any Idaho potato trade or certification mark.

48 For the accomplishment of such ends, the commission is hereby empowered
49 to employ the necessary persons or contract for the performance of required
50 services; to cooperate with any organization of growers in this state,

1 whether organized by authority of law or voluntary, engaged in carrying on
2 similar activities and to participate jointly with any such organization,
3 by contract or otherwise, in financing such study and research or paying for
4 the employment of persons or services required or in carrying out projects
5 and programs as herein contemplated; provided, however, expenditures autho-
6 rized by the commission for the purposes herein mentioned shall not exceed an
7 amount equal to twelve and one-half percent (12 1/2%) of the tax collected on
8 potatoes levied and imposed pursuant to section 22-1211, Idaho Code.

9 Provided, further, that none of the powers specified in subsection (17)
10 of this section shall be exercised, and no expenditure of revenue as provided
11 in subsection (17) of this section shall be authorized except upon the affir-
12 mative vote of six (6) or more of the members of the commission.

13 (19) The commission, in furtherance of its duties under this chapter and
14 under its rules, shall have the power to administer oaths, certify to offi-
15 cial acts and to issue subpoenas for the attendance of witnesses and the pro-
16 duction of papers, books, accounts, documents and testimony. The commission
17 may, if a witness refuses to attend or testify, or to produce any papers re-
18 quired by such subpoenas, report to the district court in and for the county
19 in which the proceeding is pending, by petition, setting forth that due no-
20 tice has been given of the time and place of attendance of said witnesses,
21 or the production of said papers, that the witness has been properly sum-
22 moned, and that the witness has failed and refused to attend or produce the
23 papers required by this subpoena before the commission, or has refused to an-
24 swer questions propounded to him in the course of said proceedings, and ask
25 an order of said court compelling the witness to attend and testify and pro-
26 duce said papers before the commission. The court, upon the petition of the
27 commission, shall enter an order directing the witness to appear before the
28 court at a time and place to be fixed by the court in such order, the time to
29 be not more than ten (10) days from the date of the order, and then and there
30 shall show cause why he had not attended and testified or produced said pa-
31 pers before the commission. A copy of said order shall be served upon said
32 witness. If it shall appear to the court that said subpoena was regularly is-
33 sued by the commission and regularly served, the court shall thereupon order
34 that said witness appear before the commission at the time and place fixed in
35 said order, and testify or produce the required papers. Upon failure to obey
36 said order, said witness shall be dealt with for contempt of court. Provided
37 that in proceedings before the commission where evidence is sought from wit-
38 nesses who are not residents of this state, the commission is authorized to
39 obtain subpoenas issued by the clerk of the district court. Subpoenas so re-
40 quested shall be issued by the clerk of the district court under the seal of
41 the court, shall state the name of the court and the title of the administra-
42 tive action, and shall command each person to whom it is directed to attend
43 and give testimony at a time and place therein specified. Subpoenas shall be
44 used only to require attendance of a witness at a deposition or hearing. The
45 clerk shall issue a subpoena or a subpoena for the production of documentary
46 evidence, signed and sealed but otherwise in blank, to a party requesting it,
47 who shall fill it in before service.