

Enrolled
Senate Bill 639

Sponsored by Senator NELSON; Senator MORRISETTE

CHAPTER

AN ACT

Relating to the Oregon Wheat Commission; creating new provisions; and amending ORS 578.025, 578.030, 578.040, 578.060, 578.070, 578.080, 578.090, 578.120, 578.130 and 578.216.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 578.

SECTION 2. If the Director of Agriculture finds that an appointed member of the Oregon Wheat Commission has ceased to qualify under ORS 578.040 for membership on the commission, the director shall immediately declare the position of that member vacant.

SECTION 3. ORS 578.025 is amended to read:

578.025. (1) The State Department of Agriculture shall:

- (a) Monitor the practices or methods used or proposed for use by the Oregon Wheat Commission in carrying out the goals and needs disclosed by the budget of the commission;
- (b) Promote cooperation among the commission, commodity commissions and the Oregon Beef Council and assist in the interchange of information and experience among those entities;
- (c) Carry out the assigned organizational procedures under this chapter, including **providing input to the Director of Agriculture for carrying out the duties of the director regarding the appointment and removal of members of the commission;**
- (d) Review budgets submitted to the director [*of Agriculture*] by the commission; and
- (e) Adopt rules to carry out the provisions of this chapter.

(2) Except as provided in ORS 578.216, the department shall review[, *and may approve or disapprove,*] plans and projects recommended by the commission for wheat promotion, advertising and research and for the dissemination of consumer and wheat industry information. [*In reviewing plans and projects recommended by the commission, the department shall consider whether*] **The department shall conduct the review to ensure that** the plan or project information is:

- (a) Factual;
- (b) Not disparaging to commodities; and
- (c) Consistent with the purposes of this chapter.

SECTION 4. ORS 578.025, as amended by section 83, chapter 604, Oregon Laws 2003, is amended to read:

578.025. (1) The State Department of Agriculture shall:

- [(1)] (a) Monitor the practices or methods used or proposed for use by the Oregon Wheat Commission in carrying out the goals and needs disclosed by the budget of the commission;
- [(2)] (b) Promote cooperation among the commission, commodity commissions and the Oregon Beef Council and assist in the interchange of information and experience among those entities;

[3] (c) Carry out the assigned organizational procedures under this chapter, including **providing input to the Director of Agriculture for carrying out the duties of the director regarding** the appointment and removal of members of the commission;

[4] (d) Review budgets submitted to the director [*of Agriculture*] by the commission; and

[5] (e) Adopt rules to carry out the provisions of this chapter.

(2) **Except as provided in ORS 578.216, the department shall review plans and projects recommended by the commission for wheat promotion, advertising and research and for the dissemination of consumer and wheat industry information. The department shall conduct the review to ensure that the plan or project information is:**

(a) **Factual;**

(b) **Not disparaging to commodities; and**

(c) **Consistent with the purposes of this chapter.**

SECTION 5. ORS 578.030 is amended to read:

578.030. (1) There hereby is created the Oregon Wheat Commission [*consisting of eight members*]. The Director of Agriculture shall appoint **not fewer than six and not more than eight** voting commission members for terms of four years. **Except as provided in ORS 578.216,** one member appointed by the director must be a member of the public. [*not associated with the production or handling of wheat and having an active interest in the positive economic development of the wheat industry. In making the other five appointments of voting members of the commission the director shall take into consideration any nominations or recommendations made to the director by growers or growers' organizations.*]

(2) **The commission, by a rule approved by a majority of the nonpublic members appointed under subsection (1) of this section, may create not more than two additional voting member positions on the commission. A person appointed to a commission position created under this subsection must be a representative of the wheat industry. The director shall appoint members to any positions created under this subsection for a term of two years. A person may not serve a total of more than four terms as a member appointed under this subsection. Notwithstanding any term of appointment, a member position created under this section may be eliminated by a rule approved by a majority of the nonpublic board members appointed under subsection (1) of this section.**

(3) **In making appointments of voting members to the commission the director:**

(a) **Shall make all applications by qualified persons available to wheat grower organizations for review and ranking; and**

(b) **Prior to making appointments, shall take into consideration rankings and any recommendations made by wheat grower organizations.**

[2] (4) The director, or a duly authorized representative of the director, and the Dean of the College of Agricultural Sciences of Oregon State University, or a duly authorized representative of the dean, shall be [*ex officio members, without vote,*] **nonvoting members** of the commission.

SECTION 6. ORS 578.030, as amended by section 89, chapter 604, Oregon Laws 2003, is amended to read:

578.030. (1) There hereby is created the Oregon Wheat Commission [*consisting of seven members*]. The Director of Agriculture shall appoint [*five*] **not fewer than six and not more than eight** voting commission members for terms of four years. [*In making the appointments of voting members of the commission the director shall take into consideration any nominations or recommendations made to the director by growers or growers' organizations.*] **Except as provided in ORS 578.216, one member appointed by the director must be a member of the public.**

(2) **The commission, by a rule approved by a majority of the nonpublic members appointed under subsection (1) of this section, may create not more than two additional voting member positions on the commission. A person appointed to a commission position created under this subsection must be a representative of the wheat industry. The director shall appoint members to any positions created under this subsection for a term of two years. A person may not serve a total of more than four terms as a member appointed under this**

subsection. Notwithstanding any term of appointment, a member position created under this section may be eliminated by a rule approved by a majority of the nonpublic board members appointed under subsection (1) of this section.

(3) In making appointments of voting members to the commission the director:

(a) Shall make all applications by qualified persons available to wheat grower organizations for review and ranking; and

(b) Prior to making appointments, shall take into consideration rankings and any recommendations made by wheat grower organizations.

[2)] (4) The director, or a duly authorized representative of the director, and the Dean of the College of Agricultural Sciences of Oregon State University, or a duly authorized representative of the dean, shall be *[ex officio members, without vote,]* **nonvoting members** of the commission.

SECTION 7. ORS 578.040 is amended to read:

578.040. (1) The voting members of the Oregon Wheat Commission shall be selected and appointed because of their ability and disposition to serve the state's interest and their knowledge of the state's natural resources. Voting members *[other than the member of the public]* **appointed under ORS 578.030 (1)** must be **United States** citizens residing in this state*[, who have been actually engaged in growing wheat in this state for at least five years].*

(2) *[Three of the members]* **A nonpublic member appointed under ORS 578.030 (1) must have been actually engaged in growing wheat in this state for the five year period immediately prior to being appointed to the commission. Of the nonpublic members appointed under ORS 578.030 (1):**

(a) Not less than three shall be residents of and have farming operations in that part of the Columbia Basin comprising *[the following counties:]* Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson **Counties.**

(b) Not less than one *[of the members]* shall be a resident of and have a farming operation in the territory *[comprised of the other counties]* lying east of the summit of the Cascade Mountains **and not described in paragraph (a) of this subsection.**

(c) Not less than one *[member]* shall be a resident of and have a farming operation in the territory lying west of the summit of the Cascade Mountains.

(3) A public member shall be a person who is not associated with the production or handling of wheat and who has an active interest in the positive economic development of the wheat industry.

(4) A member appointed to a position added under ORS 578.030 (2) must be an owner or employee of a business entity that is engaged in the handling or processing of wheat produced in Oregon and have an active interest in the positive economic development of the wheat industry.

SECTION 8. ORS 578.040, as amended by section 93, chapter 604, Oregon Laws 2003, is amended to read:

578.040. (1) The voting members of the Oregon Wheat Commission shall be selected and appointed because of their ability and disposition to serve the state's interest and their knowledge of the state's natural resources. Voting members **appointed under ORS 578.030 (1)** must be **United States** citizens residing in this state*[, who have been actually engaged in growing wheat in this state for at least five years].*

(2) *[Three of the members]* **A nonpublic member appointed under ORS 578.030 (1) must have been actually engaged in growing wheat in this state for the five year period immediately prior to being appointed to the commission. Of the nonpublic members appointed under ORS 578.030 (1):**

(a) Not less than three shall be residents of and have farming operations in that part of the Columbia Basin comprising *[the following counties:]* Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson **Counties.**

(b) **Not less than** one [*of the members*] shall be a resident of and have a farming operation in the territory [*comprised of the other counties*] lying east of the summit of the Cascade Mountains **and not described in paragraph (a) of this subsection.**

(c) **Not less than** one [*member*] shall be a resident of and have a farming operation in the territory lying west of the summit of the Cascade Mountains.

(3) **A public member shall be a person who is not associated with the production or handling of wheat and who has an active interest in the positive economic development of the wheat industry.**

(4) **A member appointed to a position added under ORS 578.030 (2) must be an owner or employee of a business entity that is engaged in the handling or processing of wheat produced in Oregon and have an active interest in the positive economic development of the wheat industry.**

SECTION 9. ORS 578.060 is amended to read:

578.060. (1)(a) A member is removable by the Director of Agriculture [*for cause after being given a copy of written charges and an opportunity to be heard publicly*] **as provided in section 2 of this 2009 Act or for neglect of duty or misconduct in office.** [*In addition to all other causes, ceasing to be a resident of this state or to be actually engaged in growing wheat therein is sufficient cause for removal.*]

(b) **The director may remove a member only after serving the member with a copy of the charges against the member and conducting a public hearing. The director shall serve the member with the copy of the charges and notice of the time and place of the public hearing at least 10 days before the date of the hearing. At the public hearing, the member may be represented by counsel and may present and respond to evidence regarding the charges.**

(c) **If the director finds after a public hearing that there is cause to remove a member, the director shall send the member a notice under ORS 183.415 stating the director's intent to remove the member. If the member does not timely file a request for a contested case hearing, or if the director finds after a contested case hearing that there is cause to remove the member, the director may issue an order removing the member. Upon the order becoming final by operation of law, the director shall file with the Secretary of State a copy of the charges, all records and findings for the public hearing and any contested case hearing, and a copy of the order.**

(2) Members, officers and employees of the Oregon Wheat Commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The commission shall adopt uniform and reasonable rules governing the incurring and paying of such expenses.

SECTION 10. ORS 578.070 is amended to read:

578.070. The Oregon Wheat Commission shall elect a chairperson and [*may employ a secretary who is not a member of the commission*] **vice chairperson.**

SECTION 11. ORS 578.080 is amended to read:

578.080. (1) The Oregon Wheat Commission shall meet at least [*once every three months*] **four times each year** regularly and at such other times as called by the chairperson. The chairperson may call special meetings of the commission at any time.

(2) The commission may participate in meetings outside this state for the purpose of advancing the work of the commission.

SECTION 12. ORS 578.090 is amended to read:

578.090. (1) Consistent with the general purposes of this chapter, the Oregon Wheat Commission shall establish the policies to be followed in accomplishing those purposes.

(2) In the administration of this chapter, the commission has the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

(b) To find new markets for wheat and wheat products.

(c) To give, publicize and promulgate reliable information showing the value of wheat and wheat products for any purpose for which it is found useful and profitable.

(d) To make public and encourage the widespread national and international use of the special kinds of wheat and wheat products produced from the special varieties of wheat grown in Oregon.

(e) To investigate and participate in studies of the problems peculiar to the producers of wheat in Oregon.

(f) To take such action as the commission deems necessary or advisable in order to stabilize and protect the wheat industry of the state and the health and welfare of the public.

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(h) To establish a reasonable per diem allowance, in addition to expenses under ORS 578.060, to members of the commission while actually engaged in the performance of their official duties, including necessary travel time.

(3) In addition to exercising the powers listed in subsection (2) of this section, the commission may exercise the same powers that a commodity commission may exercise under ORS 576.304 or **576.306**.

SECTION 13. ORS 578.120 is amended to read:

578.120. (1) The Oregon Wheat Commission shall appoint an administrator, who [*shall devote full time to the administration of this chapter.*] **may be an employee of the commission. If the administrator is an employee of the commission, the administrator shall be an unclassified employee for purposes of ORS chapter 240. An administrator serves at the pleasure of the commission.**

(2) The administrator is [*an ex officio member, without vote,*] **a nonvoting member** of the commission.

(3) The administrator shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission.

(4) The administrator shall be [*paid the salary*] **compensated in the amount** fixed by the commission.

SECTION 14. ORS 578.130 is amended to read:

578.130. [*For the convenience of the majority of those most likely to be affected in the administration of this chapter, the administrator, upon recommendation of*] The Oregon Wheat Commission[,] may establish and maintain an office [*for the administrator,*] at any place **within this state that** the commission selects.

SECTION 15. ORS 578.216 is amended to read:

578.216. (1) In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commission may adopt rules that provide for the commission to refund all or part of an assessment on wheat upon request of the person paying the assessment. [*A rule adopted under this subsection may not provide for the commission to refund less than the portion of the assessment used by the commission for advertising and product promotion.*]

(2) If the commission adopts rules pursuant to subsection (1) of this section[,] **that provide for a refund to be at least equal in amount to the portion of the assessment on wheat that is used by the commission for advertising and product promotion:**

(a) Plans and projects recommended by the commission are exempt from State Department of Agriculture review [*and approval or disapproval*] under ORS 578.025 [(2)]; **and**

(b) **The commission may vote to eliminate the public member position on the commission.**

SECTION 16. ORS 578.216, as amended by section 78, chapter 604, Oregon Laws 2003, is amended to read:

578.216. (1) In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commission may adopt rules that provide for the commission to refund all or part of an assessment on wheat upon request of the person paying the assessment. [*A rule adopted under this subsection may*

not provide for the commission to refund less than the portion of the assessment used by the commission for advertising and product promotion.]

(2) If the commission adopts rules pursuant to subsection (1) of this section that provide for a refund to be at least equal in amount to the portion of the assessment on wheat that is used by the commission for advertising and product promotion:

(a) Plans and projects recommended by the commission are exempt from State Department of Agriculture review under ORS 578.025 (2); and

(b) The commission may vote to eliminate the public member position on the commission.

Passed by Senate March 31, 2009

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Secretary of Senate

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President of Senate

Passed by House May 14, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State