

Senate Bill 639

Sponsored by Senator NELSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Changes composition of Oregon Wheat Commission and process for appointing members. Changes process for removal of commission member for cause. Provides for Director of Agriculture to declare commission membership vacant upon member ceasing to qualify for office. Makes public member position on commission permanent, subject to elimination upon commission adopting certain rules regarding assessment refunds. Specifies cause for which director may remove commission member. Changes hearing process for removal of commission member for cause.

Specifies purpose for State Department of Agriculture review of commission plans and projects. Makes department review of commission plans and projects permanent, subject to elimination upon commission adopting certain rules regarding assessment refunds.

Allows commission to exercise same powers as commodity commission regarding independent contractors.

Eliminates requirement that commission administrator act as administrator on full-time basis. Allows commission to appoint employee or independent contractor as administrator. Changes mandatory meeting provision. Changes provision for siting of commission office. Requires commission to appoint vice chairperson.

Eliminates restriction on assessment refund amount commission may authorize by rule.

A BILL FOR AN ACT

1
2 Relating to the Oregon Wheat Commission; creating new provisions; and amending ORS 578.025,
3 578.030, 578.040, 578.060, 578.070, 578.080, 578.090, 578.120, 578.130 and 578.216.

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

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

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

9 **SECTION 3. ORS 578.025 is amended to read:**

10 578.025. (1) The State Department of Agriculture shall:

11 (a) Monitor the practices or methods used or proposed for use by the Oregon Wheat Commission
12 in carrying out the goals and needs disclosed by the budget of the commission;

13 (b) Promote cooperation among the commission, commodity commissions and the Oregon Beef
14 Council and assist in the interchange of information and experience among those entities;

15 (c) Carry out the assigned organizational procedures under this chapter, including **assisting the**
16 **Director of Agriculture in carrying out the duties of the director regarding** the appointment
17 and removal of members of the commission;

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

19 (e) Adopt rules to carry out the provisions of this chapter.

20 (2) Except as provided in ORS 578.216, the department shall review[, *and may approve or dis-*
21 *approve,*] plans and projects recommended by the commission for wheat promotion, advertising and
22 research and for the dissemination of consumer and wheat industry information. [*In reviewing plans*
23 *and projects recommended by the commission, the department shall consider whether*] **The department**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **shall conduct the review to ensure that** the plan or project information is:

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

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

7 578.025. (1) The State Department of Agriculture shall:

8 [(1)] (a) Monitor the practices or methods used or proposed for use by the Oregon Wheat Com-
9 mission in carrying out the goals and needs disclosed by the budget of the commission;

10 [(2)] (b) Promote cooperation among the commission, commodity commissions and the Oregon
11 Beef Council and assist in the interchange of information and experience among those entities;

12 [(3)] (c) Carry out the assigned organizational procedures under this chapter, including **assist-**
13 **ing the Director of Agriculture in carrying out the duties of the director regarding** the ap-
14 pointment and removal of members of the commission;

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

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

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

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

24 **SECTION 5.** ORS 578.030 is amended to read:

25 578.030. (1) There hereby is created the Oregon Wheat Commission [*consisting of eight*
26 *members*]. The Director of Agriculture shall appoint **not fewer than six and not more than eight**
27 voting commission members for terms of four years. **Except as provided in ORS 578.216,** one
28 member appointed by the director must be a member of the public. [*not associated with the pro-*
29 *duction or handling of wheat and having an active interest in the positive economic development of the*
30 *wheat industry. In making the other five appointments of voting members of the commission the director*
31 *shall take into consideration any nominations or recommendations made to the director by growers or*
32 *growers' organizations.*]

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

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

43 (a) **May not appoint a person unless the person has filed an application for appointment;**

44 (b) **May not reopen the application process for a position unless none of the applicants**
45 **for the position meet the qualifications for appointment to that position;**

1 (c) Shall make all applications by qualified persons available to wheat grower organiza-
2 tions for review and ranking; and

3 (d) Prior to making appointments, shall take into consideration rankings and any rec-
4 ommendations made by wheat grower organizations.

5 [(2)] (4) The director, or a duly authorized representative of the director, and the Dean of the
6 College of Agricultural Sciences of Oregon State University, or a duly authorized representative of
7 the dean, shall be [*ex officio members, without vote,*] **nonvoting members** of the commission.

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

10 578.030. (1) There hereby is created the Oregon Wheat Commission [*consisting of seven*
11 *members*]. The Director of Agriculture shall appoint [*five*] **not fewer than six and not more than**
12 **eight** voting commission members for terms of four years. [*In making the appointments of voting*
13 *members of the commission the director shall take into consideration any nominations or recommen-*
14 *dations made to the director by growers or growers' organizations.*] **Except as provided in ORS**
15 **578.216, one member appointed by the director must be a member of the public.**

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

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

26 (a) May not appoint a person unless the person has filed an application for appointment;

27 (b) May not reopen the application process for a position unless none of the applicants
28 for the position meet the qualifications for appointment to that position;

29 (c) Shall make all applications by qualified persons available to wheat grower organiza-
30 tions for review and ranking; and

31 (d) Prior to making appointments, shall take into consideration rankings and any rec-
32 ommendations made by wheat grower organizations.

33 [(2)] (4) The director, or a duly authorized representative of the director, and the Dean of the
34 College of Agricultural Sciences of Oregon State University, or a duly authorized representative of
35 the dean, shall be [*ex officio members, without vote,*] **nonvoting members** of the commission.

36 **SECTION 7.** ORS 578.040 is amended to read:

37 578.040. (1) The voting members of the Oregon Wheat Commission shall be selected and ap-
38 pointed because of their ability and disposition to serve the state's interest and their knowledge of
39 the state's natural resources. Voting members [*other than the member of the public*] **appointed under**
40 **ORS 578.030 (1)** must be **United States** citizens residing in this state[, *who have been actually en-*
41 *gaged in growing wheat in this state for at least five years*].

42 (2) [*Three of the members*] **A nonpublic member appointed under ORS 578.030 (1) must have**
43 **been actually engaged in growing wheat in this state for the five year period immediately**
44 **prior to being appointed to the commission. Of the nonpublic members appointed under ORS**
45 **578.030 (1):**

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

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

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

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

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

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

18 578.040. (1) The voting members of the Oregon Wheat Commission shall be selected and ap-
 19 pointed because of their ability and disposition to serve the state's interest and their knowledge of
 20 the state's natural resources. Voting members **appointed under ORS 578.030 (1) must be United**
 21 **States** citizens residing in this state[, *who have been actually engaged in growing wheat in this state*
 22 *for at least five years*].

23 (2) [*Three of the members*] **A nonpublic member appointed under ORS 578.030 (1) must have**
 24 **been actually engaged in growing wheat in this state for the five year period immediately**
 25 **prior to being appointed to the commission. Of the nonpublic members appointed under ORS**
 26 **578.030 (1):**

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

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

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

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

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

42 **SECTION 9.** ORS 578.060 is amended to read:

43 578.060. (1)**(a)** A member is removable by the Director of Agriculture for [*cause after being given*
 44 *a copy of written charges and an opportunity to be heard publicly*] **as provided in section 2 of this**
 45 **2009 Act or for neglect of duty or misconduct in office.** [*In addition to all other causes, ceasing*

1 to be a resident of this state or to be actually engaged in growing wheat therein is sufficient cause for
2 removal.]

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

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

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

20 **SECTION 10.** ORS 578.070 is amended to read:

21 578.070. The Oregon Wheat Commission shall elect a chairperson and [*may employ a secretary*
22 *who is not a member of the commission*] **vice chairperson.**

23 **SECTION 11.** ORS 578.080 is amended to read:

24 578.080. (1) The Oregon Wheat Commission shall meet at least [*once every three months*] **four**
25 **times each year** regularly and at such other times as called by the chairperson. The chairperson
26 may call special meetings of the commission at any time.

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

29 **SECTION 12.** ORS 578.090 is amended to read:

30 578.090. (1) Consistent with the general purposes of this chapter, the Oregon Wheat Commission
31 shall establish the policies to be followed in accomplishing those purposes.

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

34 **(a) To enter into contracts for carrying out the nondiscretionary functions of the com-**
35 **mission.**

36 [(a)] **(b)** To conduct a campaign of research, education and publicity.

37 [(b)] **(c)** To find new markets for wheat and wheat products.

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

40 [(d)] **(e)** To make public and encourage the widespread national and international use of the
41 special kinds of wheat and wheat products produced from the special varieties of wheat grown in
42 Oregon.

43 [(e)] **(f)** To investigate and participate in studies of the problems peculiar to the producers of
44 wheat in Oregon.

45 [(f)] **(g)** To take such action as the commission deems necessary or advisable in order to stabilize

1 and protect the wheat industry of the state and the health and welfare of the public.

2 [(g)] (h) To lease, purchase or own the real or personal property deemed necessary in the ad-
3 ministration of this chapter.

4 [(h)] (i) To establish a reasonable per diem allowance, in addition to expenses under ORS
5 578.060, to members of the commission while actually engaged in the performance of their official
6 duties, including necessary travel time.

7 (3) In addition to exercising the powers listed in subsection (2) of this section, the commission
8 may exercise the same powers that a commodity commission may exercise under ORS 576.304 **or**
9 **576.306.**

10 **SECTION 13.** ORS 578.120 is amended to read:

11 578.120. (1) The Oregon Wheat Commission shall appoint an administrator[, *who shall devote*
12 *full time to the administration of this chapter.*] **An administrator serves at the pleasure of the**
13 **commission. The administrator may be an employee of the commission or an independent**
14 **contractor. If the administrator is an employee of the commission, the administrator shall**
15 **be an unclassified employee for purposes of ORS chapter 240.**

16 (2) The administrator, [*is an ex officio member, without vote,*] **or a representative of an ad-**
17 **ministrator that is an independent contractor, is a nonvoting member** of the commission.

18 (3) The administrator shall proceed immediately to prepare the plans and general program nec-
19 essary and adequate to carry out the policies that are adopted by the commission. **The commission**
20 **may not delegate a discretionary responsibility or discretionary authority of the commission**
21 **to the administrator.**

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

24 **SECTION 14.** ORS 578.130 is amended to read:

25 578.130. [*For the convenience of the majority of those most likely to be affected in the adminis-*
26 *tration of this chapter, the administrator, upon recommendation of*] The Oregon Wheat Commission[,]
27 may establish and maintain an office [*for the administrator,*] at any place **within this state that** the
28 commission selects.

29 **SECTION 15.** ORS 578.216 is amended to read:

30 578.216. (1) In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commis-
31 sion may adopt rules that provide for the commission to refund all or part of an assessment on
32 wheat upon request of the person paying the assessment. [*A rule adopted under this subsection may*
33 *not provide for the commission to refund less than the portion of the assessment used by the commission*
34 *for advertising and product promotion.*]

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

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

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

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

44 578.216. (1) In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commis-
45 sion may adopt rules that provide for the commission to refund all or part of an assessment on

1 wheat upon request of the person paying the assessment. [*A rule adopted under this subsection may*
2 *not provide for the commission to refund less than the portion of the assessment used by the commission*
3 *for advertising and product promotion.*]

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

7 **(a) Plans and projects recommended by the commission are exempt from State Depart-**
8 **ment of Agriculture review under ORS 578.025; and**

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

10