

Enrolled
Senate Bill 946

Sponsored by Senator NELSON; Senator COURTNEY, Representatives HUNT, JENSON, G SMITH

CHAPTER

AN ACT

Relating to commissions levying assessments on agricultural products; creating new provisions; amending ORS 576.062, 576.372, 578.010, 578.020, 578.025, 578.060, 578.090, 578.105, 578.211 and 578.216; and declaring an emergency.

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

SECTION 1. ORS 576.062 is amended to read:

576.062. The following commodity commissions are established as state commissions:

- (1) The Oregon Dairy Products Commission.
- (2) The Oregon Hazelnut Commission.
- (3) The Oregon Dungeness Crab Commission.
- (4) The Oregon Salmon Commission.
- (5) The Oregon Albacore Commission.
- [(6) *The Oregon Grains Commission.*]
- [(7)] (6) The Oregon Sheep Commission.
- [(8)] (7) The Oregon Potato Commission.
- [(9)] (8) The Oregon Alfalfa Seed Commission.
- [(10)] (9) The Oregon Blueberry Commission.
- [(11)] (10) The Oregon Clover Seed Commission.
- [(12)] (11) The Oregon Fine Fescue Commission.
- [(13) *The Oregon Highland Bentgrass Commission.*]
- [(14)] (12) The Oregon Hop Commission.
- [(15)] (13) The Oregon Mint Commission.
- [(16)] (14) The Oregon Orchardgrass Seed Producers Commission.
- [(17)] (15) The Oregon Processed Vegetable Commission.
- [(18)] (16) The Oregon Raspberry and Blackberry Commission.
- [(19)] (17) The Oregon Ryegrass Growers Seed Commission.
- [(20)] (18) The Oregon Strawberry Commission.
- [(21)] (19) The Oregon Sweet Cherry Commission.
- [(22)] (20) The Oregon Tall Fescue Commission.
- [(23)] (21) The Oregon Trawl Commission.

SECTION 2. **The Oregon Grains Commission is abolished. On the operative date of this section, the tenure of office of the members of the Oregon Grains Commission ceases.**

SECTION 3. **No later than June 30, 2011, the chairperson of the Oregon Grains Commission shall deliver to the Oregon Wheat Commission all records and property within the ju-**

risdiction of the chairperson that relate to the Oregon Grains Commission. The Oregon Wheat Commission shall take possession of the records and property.

SECTION 4. (1) Section 2 of this 2011 Act and the amendments to ORS 576.062 and 576.372 by sections 1 and 5 of this 2011 Act do not relieve a first purchaser, handler or producer from payment of any assessment levied by the Oregon Grains Commission prior to the operative date of section 2 of this 2011 Act. Notwithstanding ORS 182.080, the Oregon Wheat Commission may undertake the collection or enforcement of any such assessment and may write off any uncollectible assessment as provided under ORS 293.240.

(2) Notwithstanding ORS 182.080, the Oregon Wheat Commission shall wind up and conclude the business affairs of the Oregon Grains Commission, including but not limited to the payment of outstanding obligations of the Oregon Grains Commission from the property delivered to the Oregon Wheat Commission under section 3 of this 2011 Act.

(3) Notwithstanding ORS 576.455, after the Oregon Wheat Commission winds up and concludes the business affairs of the Oregon Grains Commission, any remaining moneys of the former Oregon Grains Commission shall be transferred to the Oregon Wheat Commission for use in programs of benefit to barley producers.

SECTION 5. ORS 576.372 is amended to read:

576.372. (1) In addition to any refund permitted under ORS 576.325, the Oregon Alfalfa Seed Commission [*and the Oregon Grains Commission*] may adopt rules that provide for the [*commodity commission adopting the rule*] **commission** to refund all or part of a commodity assessment levied by the commission upon request of the person paying the assessment. A rule adopted under this subsection may not provide for [*a*] **the** commission to refund an amount less than the portion of the assessment used by the commission for advertising and product promotion.

(2) If [*a*] **the** commission adopts rules pursuant to subsection (1) of this section:

(a) Plans and projects recommended by [*that*] **the** commission are exempt from State Department of Agriculture review and approval or disapproval under ORS 576.066 (2); and

(b) Notwithstanding ORS 576.206, the commission may vote to eliminate the position for a commissioner who is a member of the public.

SECTION 6. ORS 578.010 is amended to read:

578.010. As used in this chapter, unless the context requires otherwise:

(1) "Commercial channels" means the sale of wheat **or other grains** 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 other grains** or product produced from wheat **or other grains**.

(2) "Commission" means the Oregon Wheat Commission.

(3) "Director" means the Director of Agriculture.

(4) "First purchaser" means any person, corporation, association or partnership that buys wheat **or other grains** from the grower in the first instance, or any lienholder, public or private, who may possess wheat **or other grains** from the grower under any lien.

(5) "Grower" means:

(a) Any landowner personally engaged in growing wheat **or other grains**;

(b) A tenant of the landowner personally engaged in growing wheat **or other grains**; [*and*]

(c) Both the owner and the tenant jointly; and

(d) [*includes a*] **Any other** person, partnership, association, corporation, cooperative, trust, sharecropper[, *and any and all*] **or other business units, devices [*and*] or arrangements engaged in growing wheat or other grains.**

(6) "Sale" includes any pledge or mortgage of wheat **or other grains**, after harvest, to any person, public or private.

SECTION 7. ORS 578.020 is amended to read:

578.020. (1) The Legislative Assembly finds and declares that:

(a) It is in the interest of all the people that the abundant natural resources of Oregon be protected, fully developed and uniformly distributed.

(b) The growing of wheat **and other grains** is an agricultural industry that contributes to the economic welfare of Oregon.

(c) Because a surplus of wheat **and other grains** is grown in this state and, during recurrent years, that surplus has been in excess of all available markets, it is necessary that additional markets for wheat **and other grains** be found in order to provide profitable enterprises for [*wheat*] growers and to provide employment for labor and industry dependent upon wheat **and other grains**.

(2) The purpose of this chapter is to promote the public health and welfare by providing means for the protection and stabilization of [*the wheat*] industry **for wheat and other grains** in this state.

SECTION 8. 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 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 plans and projects recommended by the commission for [*wheat*] **the promotion of wheat or other grains, and for** advertising and research and [*for*] the dissemination of consumer and [*wheat*] industry information **for wheat and other grains**. 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 9. ORS 578.060 is amended to read:

578.060. (1)(a) A member is removable by the Director of Agriculture as provided in ORS 578.045 or for neglect of duty or misconduct in office.

(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) The Oregon Wheat Commission may adopt rules establishing the amount of payment that a member of the commission receives under ORS 292.495 (1) for each day or portion of a day during which the member is actually engaged in the performance of official duties. The amount may exceed, but not be less than, the amount of payment that would otherwise be provided under ORS 292.495 (1).

[2] **(3) 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. Subject to any limitations described under ORS 292.495 (2), the commission shall adopt uniform and reasonable rules governing the incurring and paying of such expenses.**

SECTION 10. 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 lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(c) To adopt rules as described in ORS 578.060 regarding the payment of per diem allowance and expenses of commission members while actually engaged in the performance of official duties, including necessary travel time.

(d) For wheat:

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

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

[(d)] **(C)** 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)] **(D)** To investigate and participate in studies of the problems peculiar to the producers of wheat in Oregon.

[(f)] **(E)** 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.

(e) For any other grains assessed by the commission:

(A) To find new markets for grains and grain products.

(B) To give, publicize and promulgate reliable information showing the value of grains and grain products for any useful and profitable purpose.

(C) To make public and encourage the widespread national and international use of Oregon grains and grain products.

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

(E) To take such action as the commission deems necessary or advisable in order to stabilize and protect the grain 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 11. ORS 578.105 is amended to read:

578.105. (1) As used in this section, "intellectual property" means patents, copyrights, trademarks, inventions, discoveries, processes, ideas and other similar property, whether or not they are patentable or copyrightable.

(2) The Oregon Wheat Commission may, consistent with the purposes of the commission, develop intellectual property that relates to wheat **or other assessed grains** or assists in the implementation, maintenance or development of commission programs. The commission may take all necessary and proper actions relating to the development of an intellectual property, including but not limited to entering into contracts and other agreements and owning, managing, disposing of or using the intellectual property. The commission may adopt rules to govern the ownership, management, disposal and use of intellectual property and other activities of the commission relating to intellectual property.

(3) Moneys received by the commission as a result of the ownership, management, disposal or use of intellectual property, or other activities of the commission relating to intellectual property, must be deposited to an account established and maintained by the commission.

SECTION 12. ORS 578.211 is amended to read:

578.211. (1)(a) The Oregon Wheat Commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all units of wheat grown or produced in this state and sold in commercial channels **and on units of any other grains grown or produced in this state and sold in commercial channels.** The commission may not apply an assessment to any transaction that occurred prior to the date that the commission order assessing the assessment was entered.

(b) The commission may assess, levy and collect a differential assessment, the amount of which the commission shall determine, based on the intended use, type or variety of wheat **or other grains.**

(c) All casual sales of wheat **or other grains** made by the producer direct to the consumer are exempt from the assessment.

(d) The commission may, by rule, define and regulate handling, processing and casual sales.

(2) The commission shall assess and levy an assessment under subsection (1) of this section to the producer at the time and in the manner prescribed by the commission by rule. The commission is the owner of a collected assessment. A person who collects an assessment holds the assessment in trust for the benefit of the commission and the state and shall remit the assessment in the time and manner prescribed by the commission by rule. The assessment shall be deducted as provided by this section whether the wheat *[is]* **or other grains are** stored in this or another state.

(3) A lienholder who possesses wheat **or other grains** under the lien shall deduct the assessment from the proceeds of the claim secured by the lien when the wheat **or other grain** is pledged or mortgaged.

(4) Notwithstanding subsection (2) of this section, the commission may assess and levy an assessment and collect an assessment from a first purchaser at the time and in the manner prescribed by the commission by rule.

(5) A person who believes that the amount of an assessment is incorrect may apply to the commission within 60 days after paying the assessment for a refund of the excess amount paid.

(6) An assessment under this section is a lien on the wheat **or other grain** and has priority over other liens or encumbrances on the wheat **or other grain** except liens created by a statute of this state.

(7) The commission may, by rule, establish exemptions from assessment based on:

(a) Wheat **or other grain** quantities;

(b) Types of wheat sale **or other grain sale**; and

(c) Types of wheat producer **or other grain producer.**

SECTION 13. 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 **or on other grains** upon request of the person paying the assessment.

(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 **or other grains** 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.

SECTION 14. The Oregon Highland Bentgrass Commission is abolished. On the operative date of this section, the tenure of office of the members of the Oregon Highland Bentgrass Commission ceases.

SECTION 15. No later than June 30, 2011, the chairperson of the Oregon Highland Bentgrass Commission shall deliver to the Oregon Fine Fescue Commission all records and

property within the jurisdiction of the chairperson that relate to the Oregon Highland Bentgrass Commission. The Oregon Fine Fescue Commission shall take possession of the records and property.

SECTION 16. (1) Section 14 of this 2011 Act and the amendments to ORS 576.062 by section 1 of this 2011 Act do not relieve a first purchaser, handler or producer from payment of any assessment levied by the Oregon Highland Bentgrass Commission prior to the operative date of section 14 of this 2011 Act. Notwithstanding ORS 182.080, the Oregon Fine Fescue Commission may undertake the collection or enforcement of any such assessment and may write off any uncollectible assessment as provided under ORS 293.240.

(2) Notwithstanding ORS 182.080, the Oregon Fine Fescue Commission shall wind up and conclude the business affairs of the Oregon Highland Bentgrass Commission, including but not limited to the payment of outstanding obligations of the Oregon Highland Bentgrass Commission from the property delivered to the Oregon Fine Fescue Commission under section 15 of this 2011 Act.

(3) Notwithstanding ORS 576.455, after the Oregon Fine Fescue Commission winds up and concludes the business affairs of the Oregon Highland Bentgrass Commission, any remaining moneys of the former Oregon Highland Bentgrass Commission shall be transferred to the Oregon Fine Fescue Commission for use in programs of benefit to highland bentgrass producers.

SECTION 17. The Director of Agriculture shall identify the types and subtypes of commodities formerly assessed by the Oregon Highland Bentgrass Commission and shall include those types and subtypes of commodities as part of the class of types and subtypes that the director determines under ORS 576.051 (3) to be a commodity subject to assessment, support and promotion by the Oregon Fine Fescue Commission. The director shall make the inclusion described in this section no later than 90 days after the effective date of this 2011 Act.

SECTION 18. Section 17 of this 2011 Act is repealed January 2, 2014.

SECTION 19. Sections 2 and 14 of this 2011 Act and the amendments to ORS 576.062, 576.372, 578.010, 578.020, 578.025, 578.060, 578.090, 578.105, 578.211 and 578.216 by sections 1 and 5 to 13 of this 2011 Act become operative July 1, 2011.

SECTION 20. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 12, 2011

Repassed by Senate May 18, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 16, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State