

D R A F T

SUMMARY

States that State Department of Agriculture authority to establish control areas includes establishment for purpose of eradicating or excluding genetically engineered commodity plants.

Authorizes department to establish, upon petition or for cause, market production districts and to administer districts to provide for coexistence in manner that reduces or eliminates existing or potential conflicts between activities related to commercial production of commodity plants that are genetically engineered and activities related to commercial production of commodity plants that are not genetically engineered. Requires department to annually report to Legislative Assembly regarding market production district formation efforts.

Requires retailer or wholesaler of genetically engineered agricultural seed or vegetable seed to annually report certain sales information to department.

A BILL FOR AN ACT

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Relating to agricultural commodities.

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

SECTION 1. (1) As used in this section:

(a) **“Commodity plants” means plants that are used for fiber or for food for humans or animals, plants that are used for other agricultural commodities and the produce of those plants.**

(b) **“Genetically engineered” means resulting or derived from genetic modification by recombinant DNA techniques.**

(c) **“Plant” means plants, plant parts or seeds.**

(2) The authority of the State Department of Agriculture to establish a control area under ORS 570.405 includes, but is not limited to, the authority to establish a control area for the eradication or exclu-

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 sion of commodity plants that are genetically engineered:

2 (a) For the general protection of the horticultural, agricultural or
3 forestry industries of this state against the transfer of genetic traits
4 from commodity plants that are genetically engineered; or

5 (b) To prevent or control the transfer of genetic traits from com-
6 modity plants that are genetically engineered to wild or feral plants.

7 **SECTION 2.** As used in sections 2 to 9 of this 2015 Act:

8 (1) “Coexistence” means the concurrent carrying out of commercial
9 activities, including but not limited to cultivation.

10 (2) “Commodity plants” means plants that are used for fiber or for
11 food for humans or animals, plants that are used for other agricultural
12 commodities and the produce of those plants.

13 (3) “Genetically engineered” means resulting or derived from ge-
14 netic modification by recombinant DNA techniques.

15 (4) “Grower” means a person engaged in the commercial agricul-
16 tural practices that utilize plants.

17 (5) “Market production district” means an area designated by the
18 State Department of Agriculture by rule under section 6 of this 2015
19 Act.

20 (6) “Plant” means plants, plant parts or seeds.

21 **SECTION 3.** (1) A grower of a commodity plant may file a petition
22 with the State Department of Agriculture to establish a market pro-
23 duction district in the area used by the grower for activities related
24 to the commercial production of commodity plants. If the department
25 approves the petition, the department may establish a market pro-
26 duction district as provided under this section to provide for coexist-
27 ence in a manner that prevents conflicts between activities related to
28 the commercial production of commodity plants that are genetically
29 engineered and activities related to the commercial production of
30 commodity plants that are not genetically engineered.

31 (2) A petition for the formation of a market production district

1 must be in writing and in a form acceptable to the department. The
2 petition must be accompanied by a petition review fee of \$2,500. The
3 petition must include, but need not be limited to:

4 (a) A statement of the purpose that would be served by the market
5 production district;

6 (b) The identification of a county line as the proposed boundary of
7 the market production district;

8 (c) A description of any existing or potential conflict between ac-
9 tivities related to the commercial production of commodity plants that
10 are genetically engineered and activities related to the commercial
11 production of commodity plants that are not genetically engineered;

12 (d) Credible materials documenting that commodity market access
13 is at risk due to existing or potential conflicts described in the peti-
14 tion;

15 (e) A description of the process used to determine that coexistence
16 is not feasible in the absence of a market production district, including
17 but not limited to previous efforts to resolve the existing or potential
18 conflicts by other means; and

19 (f) A proposed plan for mitigation strategies designed to create a
20 reasonable probability that the formation of a market production dis-
21 trict will result in coexistence in a manner that prevents existing or
22 potential conflicts between commercial activities related to the pro-
23 duction of commodity plants that are genetically engineered and
24 commercial activities related to the production of commodity plants
25 that are not genetically engineered.

26 **SECTION 4. (1) If a petition is filed under section 3 of this 2015 Act,**
27 **the State Department of Agriculture shall issue a written decision**
28 **approving or denying the market production district formation re-**
29 **quested in the petition within a reasonable time, not to exceed 180**
30 **days. The decision shall state the reasons for approving or denying the**
31 **formation of the district.**

1 **(2) Except as provided in subsection (3) of this section, the depart-**
2 **ment shall approve formation of the district if the department deter-**
3 **mines there is a reasonable probability that the formation of the**
4 **district will result in coexistence in a manner that prevents existing**
5 **or potential conflicts between activities related to the commercial**
6 **production of commodity plants that are genetically engineered and**
7 **activities related to the commercial production of commodity plants**
8 **that are not genetically engineered.**

9 **(3) The department may deny formation of the district if the de-**
10 **partment determines that the grower filing the petition refused to**
11 **make reasonable efforts to resolve an existing or potential conflict**
12 **prior to filing the petition. As used in this subsection, “reasonable ef-**
13 **forts” may include, but is not limited to, participation in mediation**
14 **conducted by or on behalf of the department.**

15 **(4) If the department denies formation of the district, the written**
16 **decision issued by the department must include proposals for alterna-**
17 **tive voluntary actions that can be taken to resolve the existing or**
18 **potential conflicts identified in the petition.**

19 **(5) The department shall make a copy of the decision available on**
20 **a website maintained by the department and accessible to the public**
21 **without charge.**

22 **(6) The department shall annually report to the Legislative Assem-**
23 **bly as provided under ORS 192.245 regarding petitions filed under sec-**
24 **tion 3 of this 2015 Act. The report shall include, but need not be limited**
25 **to, a summary of the petitions filed, the decisions rendered on those**
26 **petitions and the rationale for each decision. The report shall also**
27 **identify any market production districts established by the department**
28 **under section 5 of this 2015 Act.**

29 **SECTION 5. Notwithstanding sections 3 and 4 of this 2015 Act, the**
30 **State Department of Agriculture may on its own initiative identify an**
31 **area as being appropriate for the establishment of a market production**

1 district and may issue a determination to establish a proposed district
2 if the department reasonably believes, based on a detailed assessment
3 of the area, that the establishment of a district is necessary to prevent
4 an existing or potential conflict arising from the spreading of genet-
5 ically engineered plants from an area.

6 **SECTION 6.** (1) If the State Department of Agriculture approves
7 formation of a market production district under section 4 of this 2015
8 Act, or makes a determination under section 5 of this 2015 Act that a
9 market production district should be formed, the department shall
10 adopt rules to establish a market production district.

11 (2) Notwithstanding ORS 183.335 (5), in addition to any other pro-
12 ceedings required under ORS chapter 183, prior to adopting the rules
13 the department shall hold a public hearing regarding the proposed
14 market production district to be held within the proposed district
15 boundaries identified in the petition or in the department determi-
16 nation. The hearing must include an opportunity for public comment.

17 (3) Rules adopted under this section to establish a market pro-
18 duction district must include, but need not be limited to, mitigation
19 strategies and mandatory best practices designed to reduce or elimi-
20 nate existing or potential conflicts between, and provide for coexist-
21 ence of, activities related to the commercial production of commodity
22 plants that are genetically engineered and activities related to the
23 commercial production of commodity plants that are not genetically
24 engineered. Mitigation strategies must be designed to promote coex-
25 istence by preventing or controlling cross-pollination or other means
26 of transfer of genetic traits between commodity plants that are ge-
27 netically engineered and commodity plants that are not genetically
28 engineered. Mitigation strategies may include, but need not be limited
29 to, the establishment of isolation distances, the use of crop registra-
30 tion and the use of pinning systems.

31 (4) Notwithstanding the limitations for a proposed boundary in a

1 petition filed under section 3 of this 2015 Act, the department shall
2 determine the appropriate boundaries for a market production district.
3 In establishing the boundaries for a district, the department shall give
4 consideration to the boundaries proposed in the petition for formation
5 of the district, the advice of any advisory committee appointed by the
6 department regarding the proposed district and any public comment
7 pertinent to the boundaries for the proposed district.

8 (5) The department may adopt, modify or repeal rules for an exist-
9 ing market production district as provided under ORS chapter 183.

10 SECTION 7. The State Department of Agriculture may, during
11 reasonable hours, enter agricultural lands and facilities that are sub-
12 ject to market production district rules for the purpose of verifying
13 compliance with the rules. The department may inspect records and
14 collect samples as part of the compliance verification.

15 SECTION 8. The State Department of Agriculture may charge
16 growers that are subject to market production district rules reasonable
17 fees to cover the cost of administering and enforcing the district rules.

18 SECTION 9. The establishment of a market production district un-
19 der section 6 of this 2015 Act does not affect the ability of the State
20 Department of Agriculture to establish a control area under ORS
21 570.405 for a purpose described in section 1 of this 2015 Act in the same
22 or an overlapping area. However, if the terms of a control area estab-
23 lished under ORS 570.405 and a market production district established
24 by department rule under section 6 of this 2015 Act conflict, the terms
25 of the control area shall supersede the provisions for the market pro-
26 duction district.

27 SECTION 10. A person that violates a market production district
28 rule adopted under section 6 of this 2015 Act is subject to the assess-
29 ment of a civil penalty by the State Department of Agriculture, not
30 to exceed \$10,000 per violation.

31 SECTION 11. Section 12 of this 2015 Act is added to and made a part

1 of ORS 633.511 to 633.750.

2 **SECTION 12.** (1) As used in this section, “genetically engineered”
3 means resulting or derived from genetic modification by recombinant
4 DNA techniques.

5 (2) In addition to any other labeling requirements, packages con-
6 taining more than one pound of genetically engineered agricultural
7 seed or vegetable seed must be labeled in a clear and conspicuous
8 manner as required by State Department of Agriculture rule stating:

9 (a) The types of genetically engineered seed contained in the pack-
10 age; and

11 (b) The traits for which the seed has been genetically engineered.

12 (3) A retailer or wholesaler of packages containing more than one
13 pound of genetically engineered agricultural seed or vegetable seed
14 shall keep a record of package sales made for delivery in this state,
15 including but not limited to a record of the package weight, the types
16 of seed in the packages and the traits for which the packaged seeds
17 have been genetically engineered. The retailer or wholesaler shall re-
18 port the sales information annually to the department. The depart-
19 ment shall post the reported weight, type and trait information,
20 aggregated by area, on a department website accessible by the public
21 without charge.

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