

House Bill 2718

Sponsored by Representative CLEM (Pre-session filed.)

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**.

Increases limit on annual registration fees and inspection fees for fertilizer, agricultural amendment, agricultural mineral and lime products.

Makes using portion of fertilizer, agricultural amendment and agricultural mineral inspection fees to fund grants mandatory. Increases limit on portion of fee used to fund grants. Revises subject of grants funded from fees. Transfers authority to direct expenditure of fee moneys for grants. Requires and allows certain actions by State Department of Agriculture regarding issuance of grants.

Requires that portion of fertilizer, agricultural amendment and agricultural mineral inspection fees be used for funding faculty position with College of Agricultural Sciences of Oregon State University. Addresses scope of work by faculty member.

Changes name and membership of Fertilizer Research Committee. Revises committee functions.

A BILL FOR AN ACT

1 Relating to soil nutrients; creating new provisions; and amending ORS 633.362, 633.461 and 633.479.

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

3 **SECTION 1. (1) The State Department of Agriculture shall withhold from the inspection**
4 **fee that the department charges under ORS 633.461 (2)(a) on each ton of fertilizer, agricul-**
5 **tural amendment or agricultural mineral products distributed:**
6

7 (a) An amount equal to not less than \$0.25 for annual expenditure, as directed by the
8 Fertilizer Research and Education Committee created under ORS 633.479, to fund grants for
9 research, education and development related to nutrient use efficiency and efficacy and to
10 reducing the impact of nutrients on ground water and surface water quality; and

11 (b) An amount equal to \$0.10 for transfer annually as directed by the Dean of the College
12 of Agricultural Sciences of Oregon State University, to fund a faculty position in the college
13 having, subject to subsection (3) of this section, the primary purposes of:

14 (A) Developing a strategy for Oregon nutrient management and water resource pro-
15 tection; and

16 (B) Providing general and crop-specific recommendations, tools and training for increas-
17 ing nutrient use efficiency and efficacy and for reducing the impact of nutrients on ground
18 and surface water quality.

19 (2) The department shall expend moneys annually for funding grants under subsection
20 (1)(a) of this section. Grants for a research, education or development project may be re-
21 newed annually, not to exceed a maximum grant period of four years.

22 (3) The department and the dean, after being advised by the committee, shall enter into
23 a memorandum of understanding setting forth the scope of work for the faculty position
24 described in subsection (1)(b) of this section.

25 **SECTION 2.** ORS 633.362 is amended to read:

26 633.362. (1) Each separately identifiable fertilizer, agricultural amendment, agricultural mineral
27 or lime product, whether in package or in bulk, must be registered with the State Department of

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 Agriculture. A person may not distribute a fertilizer, agricultural amendment, agricultural mineral
2 or lime product in this state unless the fertilizer, agricultural amendment, agricultural mineral or
3 lime product is registered with the department.

4 (2) The application for registration must be made on a form or forms provided by the depart-
5 ment. The application for registration must include the following information:

6 (a) Product name and grade;

7 (b) Product label;

8 (c) Name and physical address of the registrant;

9 (d) Mailing address of the registrant;

10 (e) Product laboratory analysis;

11 (f) Supplier or suppliers of ingredients;

12 (g) Identification of the industry, industry process or industry processes and location of the fa-
13 cility that generated any waste-derived ingredient or ingredients; and

14 (h) Other information required by the department by rule.

15 (3) The application for registration shall be accompanied by a nonrefundable registration fee
16 established by department rule, not to exceed [~~\$25~~] **\$50** annually for each fertilizer, agricultural
17 amendment, agricultural mineral or lime product. In addition, for a waste-derived product, the de-
18 partment shall charge an annual product evaluation fee. For a fertilizer, agricultural amendment,
19 agricultural mineral or lime product, the department may charge a product evaluation fee if sup-
20 plementary research and evaluation by the department is required in order to determine product
21 compliance with ORS 633.311 to 633.479. The department shall establish product evaluation fees by
22 rule, not to exceed \$50. The department shall review the registration application form and product
23 label for compliance with ORS 633.311 to 633.479. If the department finds that the application in-
24 formation and product label comply with ORS 633.311 to 633.479, the department shall issue a cer-
25 tificate of registration to the registrant.

26 (4) Certificates of registration shall expire on December 31 of each year, except that the de-
27 partment may grant a certificate of registration for two years. Certificates of registration for two
28 years shall expire on December 31 of the last year in the two-year period.

29 (5) The department may assess a \$25 late registration fee for a product if the registrant has not
30 paid the registration fee prior to the 30th day following the expiration of the certificate of regis-
31 tration. A late registration fee assessed by the department under this subsection shall be added to
32 the registration fee required under subsection (3) of this section and must be paid by the registrant
33 before the department may issue a certificate of registration.

34 (6) The department may require proof of label or labeling statements or claims of the efficacy
35 and usefulness of an ingredient prior to issuing a certificate of registration or at any time deemed
36 necessary by the department. As proof, the department may request data from the registrant to
37 support the label or labeling claims. The department may also rely on other experimental data, data
38 from agricultural experiment stations, product review evaluations and advice from other authori-
39 tative sources. The data must be from recognized, statistically designed and analyzed trials con-
40 ducted by recognized experts in the field. All supporting data shall be representative of the soil,
41 crops and climatic conditions found in the northwestern United States.

42 (7) In evaluating a label or labeling statement, claim or guarantee, the department may require
43 the submission of a written statement describing the methodology of the laboratory analysis used,
44 the source of the ingredient material and any reference material relied on to support the label or
45 labeling statement, claim or guarantee. Laboratory analyses submitted in support of an application

1 for registration must comply with laboratory methods of analysis approved by the department.

2 (8) Each registrant shall notify the department of any change that results in a laboratory anal-
 3 ysis that differs from the laboratory analysis submitted in support of the related application for
 4 registration or any change in sources of product ingredients declared on the application form. The
 5 registrant must notify the department within 30 days following the change.

6 (9) The registrant shall identify as “waste-derived” in the application for registration any
 7 fertilizer, agricultural amendment, agricultural mineral or lime product that is waste-derived and
 8 distributed as a single ingredient product or blended with other fertilizer, agricultural amendment,
 9 agricultural mineral or lime products. The application for registration must identify the industry, the
 10 industry process or processes and the location of the facility that generated the waste and all in-
 11 gredients of concern as identified by the department by rule.

12 (10) The initial application for registration of a fertilizer, agricultural amendment, agricultural
 13 mineral or lime product must include a statement of the levels of metals in the product, including
 14 but not limited to arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), nickel (Ni) or other metals
 15 or substances identified by the department by rule. The registrant must provide a laboratory anal-
 16 ysis report, in accordance with acceptable methods required by the department, to verify the levels
 17 of metals or other substances in the product. Subsequent to initial product registration, the regis-
 18 trant shall provide a laboratory analysis report for the product to the department upon request. An
 19 initial or subsequent laboratory analysis must have been conducted no more than 18 months prior
 20 to submission of that analysis to the department.

21 (11) The department shall establish by rule the level of metals or other substances permitted in
 22 fertilizer, agricultural amendment, agricultural mineral and lime products registered with the de-
 23 partment, including but not limited to the permitted levels of arsenic (As), cadmium (Cd), mercury
 24 (Hg), lead (Pb), nickel (Ni) or other metals or substances identified by the department by rule for
 25 the purpose of protecting humans, animals, water, aquatic life, soil or beneficial plant life. The de-
 26 partment shall review the permitted level of metals or other substances in fertilizer, agricultural
 27 amendment, agricultural mineral and lime products a minimum of once every five years.

28 (12) Notwithstanding subsection (1) of this section, a custom mix is not required to be registered
 29 if all of the fertilizer, agricultural amendment, agricultural mineral or lime products contained in the
 30 final product are registered in accordance with this section.

31 (13) The department may refuse to register any fertilizer, agricultural amendment, agricultural
 32 mineral or lime product if distribution of the product would violate a provision of ORS 633.311 to
 33 633.479. The registration of each product is a distinct and separate registration. The refusal of the
 34 department to register or reregister any product does not affect the registration of any other prod-
 35 uct by the same person.

36 **SECTION 3.** ORS 633.461 is amended to read:

37 633.461. (1) A person shall file a semiannual tonnage report with the State Department of Agri-
 38 culture if the person:

39 (a) Distributes into this state, from foreign or domestic sources, a fertilizer, agricultural
 40 amendment or agricultural mineral product used as an ingredient in the in-state manufacture of a
 41 fertilizer, agricultural amendment or agricultural mineral product;

42 (b) Distributes into this state, from foreign or domestic sources, an end-use fertilizer, agricul-
 43 tural amendment or agricultural mineral product for use within this state; or

44 (c) Distributes into this state a fertilizer, agricultural amendment or agricultural mineral prod-
 45 uct composed of ingredients not described under paragraph (a) or (b) of this subsection.

1 (2) Except as provided in subsection (8) of this section, a person described in subsection (1) of
 2 this section shall pay the department an inspection fee in an amount established by rule:

3 (a) Not to exceed [~~\$0.45~~] **\$0.75** for each ton of fertilizer, agricultural amendment or agricultural
 4 mineral products distributed. [*of which, after being advised by the Fertilizer Research Committee*
 5 *created in ORS 633.479, the department may expend an amount not to exceed \$0.25 to fund grants for*
 6 *research and development related to the interaction of fertilizer, agricultural amendment or agricultural*
 7 *mineral products and ground water or surface water.*]

8 (b) Not to exceed \$0.05 for each ton of gypsum, land plaster or an agricultural mineral with a
 9 principal ingredient of calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ or CaSO_4) distributed.

10 (3) Each person shall file a semiannual tonnage report required by subsection (1) of this section
 11 with the department, on forms provided by the department, setting forth the total tonnage of each
 12 product distributed into or within this state during the reporting period. The reporting periods for
 13 each year are January 1 through June 30 and July 1 through December 31. Semiannual tonnage
 14 reports and inspection fees are due within 30 days after the end of the reporting period.

15 (4) Notwithstanding ORS 633.362, the department may suspend or deny registration of a product
 16 until the semiannual tonnage report is filed and the inspection fee is paid as required under this
 17 section.

18 (5) If a person described in subsection (1) of this section does not distribute any fertilizer, agri-
 19 cultural amendment or agricultural mineral product into or within this state during a reporting pe-
 20 riod, the person shall file a semiannual tonnage report declaring that no distribution occurred.

21 (6) If a person required to file a semiannual tonnage report or pay an inspection fee does not
 22 file the report or pay the fee within 30 days of the due date established by the department:

23 (a) The department may assess a collection fee of 10 percent of the amount due or \$25, which-
 24 ever is greater; and

25 (b) The department may withhold registration of the product until the report is filed and the fee
 26 is paid.

27 (7) A person required to file a semiannual tonnage report under this section shall maintain re-
 28 cords and a bookkeeping system that accurately indicate the tonnage of fertilizer, agricultural
 29 amendment or agricultural mineral product that is subject to inspection fees. The person shall
 30 maintain the records for a period of three years.

31 (8) The department may not assess inspection fees on any fertilizer, agricultural amendment or
 32 agricultural mineral product in commercial transit that is not intended for use or final distribution
 33 in this state.

34 (9) ORS 561.450 applies to a person who refuses to pay inspection fees due to the department
 35 under this section.

36 (10) If there are duplicate inspection fee payments, an application made for a refund must be
 37 on forms provided by the department and submitted to the department within 180 days of the alleged
 38 overpayment.

39 (11) If the inspection fees due under a semiannual tonnage report are \$5 or less, the person is
 40 not required to pay the inspection fees due under that report. However, a person exempted from
 41 paying inspection fees must still file the semiannual tonnage report.

42 **SECTION 4.** ORS 633.479 is amended to read:

43 633.479. (1) There is created the Fertilizer Research **and Education** Committee to [*advise the*
 44 *Director of Agriculture on the funding of grants for research and development related to the interaction*
 45 *of fertilizer, agricultural amendment or agricultural mineral products and ground water or surface*

1 *water.*] **provide direction and advice to the State Department of Agriculture and the Dean of**
 2 **the College of Agricultural Sciences of Oregon State University under section 1 of this 2015**
 3 **Act.** The committee shall consist of the Director of Agriculture or the director's designee and
 4 [*six*] **seven** members appointed by the director as follows:

5 (a) Two members [*of the public who have*] **actively engaged in farming who have** no involve-
 6 ment in the manufacture or distribution of fertilizer, agricultural amendment or agricultural mineral
 7 products;

8 (b) [*Three*] **Two** members representing the fertilizer, agricultural amendment or agricultural
 9 mineral industry; [*and*]

10 (c) One member representing Oregon State University[.];

11 **(d) One member representing the Oregon Health Authority or the public health commu-**
 12 **nity; and**

13 **(e) One member representing the Department of Environmental Quality.**

14 (2) The term of each appointed member is two years, but a member serves at the pleasure of the
 15 director. Before the expiration of the term of a member, the director shall appoint a successor whose
 16 term begins on January 1 next following. A member is eligible for reappointment. If there is a va-
 17 cancy for any cause, the director shall make an appointment to become immediately effective for the
 18 unexpired term.

19 (3) The committee shall select one of its members as chairperson and another as vice chair-
 20 person, for such terms and with duties and powers the committee determines to be necessary for the
 21 performance of the functions of those offices.

22 (4) A majority of the members of the committee constitutes a quorum for the transaction of
 23 business.

24 (5) The committee shall meet at times and places specified by the call of the chairperson or of
 25 a majority of the members of the committee.

26 (6) The director may appoint an alternate committee member for each member of the committee.

27 **SECTION 5. (1) On the effective date of this 2015 Act:**

28 **(a) The terms of the two public members of the Fertilizer Research and Education**
 29 **Committee shall cease; and**

30 **(b) The Director of Agriculture shall select one committee member who represents the**
 31 **fertilizer, agricultural amendment or agricultural mineral industry and remove that member**
 32 **from the committee.**

33 **(2) As soon as practicable after the effective date of this 2015 Act, the director shall**
 34 **make appointments to the committee to achieve the membership composition described in**
 35 **ORS 633.479.**

36 **SECTION 6. (1) The amendments to ORS 633.479 by section 4 of this 2015 Act are intended**
 37 **to change the name of the Fertilizer Research Committee to the Fertilizer Research and**
 38 **Education Committee.**

39 **(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel**
 40 **may substitute for words designating the Fertilizer Research Committee, wherever they oc-**
 41 **cur in statutory law, other words designating the Fertilizer Research and Education Com-**
 42 **mittee.**