

Enrolled
House Bill 3401

Sponsored by Representative BOSHART DAVIS; Senator GIROD

CHAPTER

AN ACT

Relating to commodity commissions; creating new provisions; amending ORS 576.062, 576.306 and 576.325; 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 Sheep Commission.
- (7) The Oregon Potato Commission.
- (8) The Oregon Alfalfa Seed Commission.
- (9) The Oregon Blueberry Commission.
- (10) The Oregon Clover Seed Commission.
- (11) The Oregon Fine Fescue Commission.
- (12) The Oregon Hop Commission.
- (13) The Oregon Mint Commission.
- [(14) *The Oregon Orchardgrass Seed Producers Commission.*]
- [(15)] (14) The Oregon Processed Vegetable Commission.
- [(16)] (15) The Oregon Raspberry and Blackberry Commission.
- [(17)] (16) The Oregon Ryegrass Growers Seed Commission.
- [(18)] (17) The Oregon Strawberry Commission.
- [(19)] (18) The Oregon Sweet Cherry Commission.
- [(20)] (19) The Oregon Tall Fescue Commission.
- [(21)] (20) The Oregon Trawl Commission.

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

SECTION 3. On or before June 30, 2019, or, if this 2019 Act becomes effective after June 30, 2019, no later than the effective date of this 2019 Act, the chairperson of the Oregon Orchardgrass Seed Producers Commission shall deliver to the Oregon Tall Fescue Commission all records and property within the jurisdiction of the chairperson that relate to the

Oregon Orchardgrass Seed Producers Commission. The Oregon Tall Fescue Commission shall take possession of the records and property.

SECTION 4. (1) Section 2 of this 2019 Act and the amendments to ORS 576.062 by section 1 of this 2019 Act do not relieve a first purchaser, handler or producer from payment of any assessment levied by the Oregon Orchardgrass Seed Producers Commission prior to the operative date of section 2 of this 2019 Act. Notwithstanding ORS 182.080, the Oregon Tall 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 Tall Fescue Commission shall wind up and conclude the business affairs of the Oregon Orchardgrass Seed Producers Commission, including but not limited to the payment of outstanding obligations of the Oregon Orchardgrass Seed Producers Commission from the property delivered to the Oregon Tall Fescue Commission under section 3 of this 2019 Act.

(3) Notwithstanding ORS 576.455, after the Oregon Tall Fescue Commission winds up and concludes the business affairs of the Oregon Orchardgrass Seed Producers Commission, any remaining moneys of the former Oregon Orchardgrass Seed Producers Commission shall be transferred to the Oregon Tall Fescue Commission for use in programs of benefit to orchardgrass producers.

SECTION 5. The Director of Agriculture shall identify the types and subtypes of commodities formerly assessed by the Oregon Orchardgrass Seed Producers 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 Tall Fescue Commission. The director shall make the inclusion described in this section no later than 90 days after the effective date of this 2019 Act.

SECTION 6. Section 5 of this 2019 Act is repealed January 2, 2020.

SECTION 7. ORS 576.325 is amended to read:

576.325. (1) As used in this section, "industry average unit price" means the average unit price for the raw commodity within the industry. Unless provided otherwise, "industry average unit price" includes prices that are calculated using a one-year, two-year or three-year average and data from the most recent complete year or years preceding the year of determination.

(2)(a) A commodity commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all units or animals of the commodity grown or produced in this state, or procured from this state's rivers or the offshore waters, but not the Columbia River, for handling within this state, and sold in commercial channels. A commission may not apply an assessment to a transaction that occurred prior to the effective date of the commission rule adopting the assessment.

(b) A 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 the commodity.

(c) All casual sales of the commodity made by the producer direct to the consumer are exempt from the assessment.

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

(3) The amount of the assessment provided for in subsection (2) of this section is limited as follows:

(a) If a commission assesses on a unit basis, the assessment may not exceed one and one-half percent of the industry average unit price. The commission may determine the industry average unit price by considering data and estimates of the United States Department of Agriculture, Oregon State University or other reliable sources.

(b) If a commission assesses on a percentage of dollar value basis, the assessment may not exceed one and one-half percent of the dollar value received by a producer for the raw commodity. If the dollar value received by a producer is not otherwise determinable, the commission may establish the dollar value based on the industry average unit price for that year for the raw commodity.

(4) Notwithstanding subsection (3) of this section:

(a) The maximum assessment by the Oregon Clover Seed Commission may not exceed one and one-half percent of the industry average unit price for products within the same market category, if assessed on a unit basis.

(b) The maximum assessments by the Oregon Albacore Commission[, *the Oregon Orchardgrass Seed Producers Commission*] and the Oregon Tall Fescue Commission may not exceed three percent of the industry average unit price if assessed on a unit basis or three percent of the value received by a producer for the raw commodity if assessed on a percentage of dollar value basis.

(c) The maximum assessment by the Oregon Sweet Cherry Commission for fresh, brined, canned and frozen cherries may not exceed four percent of the respective industry average unit prices for fresh, brined, canned and frozen cherries if assessed on a unit basis.

(d) The maximum assessment by the Oregon Processed Vegetable Commission on a commodity may not exceed 0.5 percent of the industry average unit price for that commodity if assessed on a unit basis or 0.5 percent of the dollar value received by a producer for the commodity if assessed on a percentage of dollar value basis.

(e) The maximum assessment by the Oregon Hop Commission may not exceed two percent of the industry average unit price if assessed on a unit basis.

(f) The assessment by the Oregon Sheep Commission may not be less than \$0.50 or more than \$1 per head. The commission may not increase the assessment by more than \$0.10 during any 12-month period. Notwithstanding subsection (2) of this section, the commission may levy the assessment on any sheep produced and sold in this state regardless of the disposition of the sheep and regardless of whether the sale is a casual sale. This paragraph does not allow the commission to apply an assessment to a transaction that occurs prior to the effective date of the rule adopting the assessment.

(5) A commission shall assess and levy an assessment under subsections (2) to (4) of this section to the producer at the time and in the manner provided 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 required by the commission under ORS 576.335.

(6) Notwithstanding subsection (5) of this section, a commission may assess, levy and collect an assessment from a first purchaser at the time and in the manner provided by the commission by rule. Except as provided in subsection (8) of this section, the assessment may not exceed the limits described in subsections (3) and (4) of this section.

(7) A regional commission may assess, levy and collect an assessment only on the commodity produced in the counties in which the regional commission functions.

(8) Notwithstanding subsections (3) and (4) of this section, a commodity commission may assess, levy and collect an assessment in excess of the limits described in subsections (3) and (4) of this section pursuant to a federal marketing order or agreement.

(9) A person who believes that the amount of an assessment is incorrect may apply to the commission for a refund not later than 60 days after the person pays the assessment.

SECTION 8. ORS 576.306 is amended to read:

576.306. (1) A commodity commission may contract with an independent contractor for the performance of [any] **administrator or other** services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. **As used in this subsection, “discretionary functions” does not include collecting assessments, scheduling meetings, processing payments or other administrative duties, tasks or projects assigned by the commodity commission.** ORS 279.835 to 279.855 and ORS chapters 240, 279A, 279B and 279C do not apply to the commission in obtaining [such] services **under this subsection**, except that a contract for such services may not take effect until approved by the State Department of Agriculture as provided in subsection [(7)] **(6)** of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279A, 279B, 279C and 283 and ORS 276A.206, 279.835 to 279.855 and 283.085 to 283.092 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A, 240, 243, 291, 292, 316 and 652.

[(4) Nothing in this section precludes the state or a commission from being considered the employer of the contractor described in subsection (1) of this section for purposes of unemployment compensation under ORS chapter 657 and ORS 670.600.]

[(5)] (4) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

[(6)] (5) A contractor described in subsection (1) of this section may not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

[(7)] (6) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

[(8)] (7) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

[(9)] (8) Except as provided in subsection *[(8)]* (7) of this section, the State Department of Agriculture may promulgate any rules necessary for the administration and enforcement of this section.

SECTION 9. Except as provided in this section, section 2 of this 2019 Act and the amendments to ORS 576.062 and 576.325 by sections 1 and 7 of this 2019 Act become operative July 1, 2019. If this 2019 Act becomes effective after July 1, 2019, section 2 of this 2019 Act and the amendments to ORS 576.062 and 576.325 by sections 1 and 7 of this 2019 Act become operative one day after the effective date of this 2019 Act.

SECTION 10. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House April 23, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate May 29, 2019

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State