

House Bill 3401

Sponsored by Representative BOSCHART DAVIS

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**.

Abolishes Oregon Orchardgrass Seed Producers Commission on later of July 1, 2019, or one day after effective date of Act. Provides for Oregon Tall Fescue Commission to assume winding up of Oregon Orchardgrass Seed Producers Commission affairs. Requires Director of Agriculture to determine types and subtypes of commodities formerly assessed by Oregon Orchardgrass Seed Producers Commission that may be assessed by Oregon Tall Fescue Commission.

Identifies administrative duties of type commodity commission may contract to have performed by independent contractor. Eliminates provision specifying commodity commission is not excluded from being independent contractor employer for purposes of unemployment compensation.

Declares emergency effective on passage.

A BILL FOR AN ACT

1
2 Relating to commodity commissions; creating new provisions; amending ORS 576.062, 576.306 and
3 576.325; and declaring an emergency.

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

5 **SECTION 1.** ORS 576.062 is amended to read:

6 576.062. The following commodity commissions are established as state commissions:

7 (1) The Oregon Dairy Products Commission.

8 (2) The Oregon Hazelnut Commission.

9 (3) The Oregon Dungeness Crab Commission.

10 (4) The Oregon Salmon Commission.

11 (5) The Oregon Albacore Commission.

12 (6) The Oregon Sheep Commission.

13 (7) The Oregon Potato Commission.

14 (8) The Oregon Alfalfa Seed Commission.

15 (9) The Oregon Blueberry Commission.

16 (10) The Oregon Clover Seed Commission.

17 (11) The Oregon Fine Fescue Commission.

18 (12) The Oregon Hop Commission.

19 (13) The Oregon Mint Commission.

20 *[(14) The Oregon Orchardgrass Seed Producers Commission.]*

21 *[(15)]* **(14)** The Oregon Processed Vegetable Commission.

22 *[(16)]* **(15)** The Oregon Raspberry and Blackberry Commission.

23 *[(17)]* **(16)** The Oregon Ryegrass Growers Seed Commission.

24 *[(18)]* **(17)** The Oregon Strawberry Commission.

25 *[(19)]* **(18)** The Oregon Sweet Cherry Commission.

26 *[(20)]* **(19)** The Oregon Tall Fescue Commission.

27 *[(21)]* **(20)** The Oregon Trawl Commission.

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

4 **SECTION 3.** On or before June 30, 2019, or, if this 2019 Act becomes effective after June
 5 30, 2019, no later than the effective date of this 2019 Act, the chairperson of the Oregon
 6 Orchardgrass Seed Producers Commission shall deliver to the Oregon Tall Fescue Commis-
 7 sion all records and property within the jurisdiction of the chairperson that relate to the
 8 Oregon Orchardgrass Seed Producers Commission. The Oregon Tall Fescue Commission shall
 9 take possession of the records and property.

10 **SECTION 4.** (1) Section 2 of this 2019 Act and the amendments to ORS 576.062 by section
 11 1 of this 2019 Act do not relieve a first purchaser, handler or producer from payment of any
 12 assessment levied by the Oregon Orchardgrass Seed Producers Commission prior to the op-
 13 erative date of section 2 of this 2019 Act. Notwithstanding ORS 182.080, the Oregon Tall
 14 Fescue Commission may undertake the collection or enforcement of any such assessment
 15 and may write off any uncollectible assessment as provided under ORS 293.240.

16 (2) Notwithstanding ORS 182.080, the Oregon Tall Fescue Commission shall wind up and
 17 conclude the business affairs of the Oregon Orchardgrass Seed Producers Commission, in-
 18 cluding but not limited to the payment of outstanding obligations of the Oregon
 19 Orchardgrass Seed Producers Commission from the property delivered to the Oregon Tall
 20 Fescue Commission under section 3 of this 2019 Act.

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

26 **SECTION 5.** The Director of Agriculture shall identify the types and subtypes of com-
 27 modities formerly assessed by the Oregon Orchardgrass Seed Producers Commission and
 28 shall include those types and subtypes of commodities as part of the class of types and sub-
 29 types that the director determines under ORS 576.051 (3) to be a commodity subject to as-
 30 sessment, support and promotion by the Oregon Tall Fescue Commission. The director shall
 31 make the inclusion described in this section no later than 90 days after the effective date of
 32 this 2019 Act.

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

34 **SECTION 7.** ORS 576.325 is amended to read:

35 576.325. (1) As used in this section, “industry average unit price” means the average unit price
 36 for the raw commodity within the industry. Unless provided otherwise, “industry average unit
 37 price” includes prices that are calculated using a one-year, two-year or three-year average and data
 38 from the most recent complete year or years preceding the year of determination.

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

45 (b) A commission may assess, levy and collect a differential assessment, the amount of which the

1 commission shall determine, based on the intended use, type or variety of the commodity.

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

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

5 (3) The amount of the assessment provided for in subsection (2) of this section is limited as fol-
6 lows:

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

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

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

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

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

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

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

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

32 (f) The assessment by the Oregon Sheep Commission may not be less than \$0.50 or more than
33 \$1 per head. The commission may not increase the assessment by more than \$0.10 during any
34 12-month period. Notwithstanding subsection (2) of this section, the commission may levy the as-
35 sessment on any sheep produced and sold in this state regardless of the disposition of the sheep and
36 regardless of whether the sale is a casual sale. This paragraph does not allow the commission to
37 apply an assessment to a transaction that occurs prior to the effective date of the rule adopting the
38 assessment.

39 (5) A commission shall assess and levy an assessment under subsections (2) to (4) of this section
40 to the producer at the time and in the manner provided by the commission by rule. The commission
41 is the owner of a collected assessment. A person who collects an assessment holds the assessment
42 in trust for the benefit of the commission and the state and shall remit the assessment in the time
43 and manner required by the commission under ORS 576.335.

44 (6) Notwithstanding subsection (5) of this section, a commission may assess, levy and collect an
45 assessment from a first purchaser at the time and in the manner provided by the commission by rule.

1 Except as provided in subsection (8) of this section, the assessment may not exceed the limits de-
2 scribed in subsections (3) and (4) of this section.

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

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

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

10 **SECTION 8.** ORS 576.306 is amended to read:

11 576.306. (1) A commodity commission may contract with an independent contractor for the per-
12 formance of [any] **administration or other** services. However, the commission may not contract
13 with an independent contractor to perform the discretionary functions of the commission. **As used**
14 **in this subsection, “discretionary functions” do not include collecting assessments, schedul-**
15 **ing meetings, processing payments or other administrative duties, tasks or projects assigned**
16 **by the commodity commission.** ORS 279.835 to 279.855 and ORS chapters 240, 279A, 279B and
17 279C do not apply to the commission in obtaining [such] services **under this subsection**, except that
18 a contract for such services may not take effect until approved by the State Department of Agri-
19 culture as provided in subsection [(7)] **(6)** of this section.

20 (2) The commission may rent space or acquire supplies and equipment from any contractor as
21 described in subsection (1) of this section. ORS chapters 276, 278, 279A, 279B, 279C and 283 and ORS
22 276A.206, 279.835 to 279.855 and 283.085 to 283.092 do not apply to such rentals or acquisitions.

23 (3) Except as provided in this section, a contractor described in subsection (1) of this section
24 shall be considered an independent contractor and not an employee, eligible employee, public em-
25 ployee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A,
26 240, 243, 291, 292, 316 and 652.

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

30 [(5)] **(4)** A contractor described in subsection (1) of this section shall be considered an inde-
31 pendent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

32 [(6)] **(5)** A contractor described in subsection (1) of this section may not be considered a public
33 official, public officer, state officer or executive official for purposes of Oregon law, including ORS
34 chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

35 [(7)] **(6)** The State Department of Agriculture shall review the contract described in subsection
36 (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and
37 ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination,
38 compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of
39 work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger
40 or any other clause the department deems necessary.

41 [(8)] **(7)** The Oregon Department of Administrative Services, in consultation with the State De-
42 partment of Agriculture, shall adopt rules necessary for the screening and selection of independent
43 contractors under this section.

44 [(9)] **(8)** Except as provided in subsection [(8)] **(7)** of this section, the State Department of Agri-
45 culture may promulgate any rules necessary for the administration and enforcement of this section.

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

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

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