

# TITLE 47

## AGRICULTURAL MARKETING AND WAREHOUSING

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### Chapter 576

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**AGRICULTURAL MARKETING AND WAREHOUSING**

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**MARKET DEVELOPMENT AND RESEARCH**

576.005 [1953 c.489 §1; 1955 c.732 §1; renumbered 576.051]

**576.006 Definitions for ORS 576.006 to 576.022.** As used in ORS 576.006 to 576.022:

(1) "Department" means the State Department of Agriculture of the State of Oregon.

(2) "Farm products" means all agricultural, floricultural, vegetable and fruit products of the soil, livestock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.

(3) "Food products" means any and all products either in a natural or processed state used by human or animal as food. [1955 c.572 §1]

**576.009 Agricultural Development Division.** There is established within the department an Agricultural Development Division which shall have the powers and duties conferred by ORS 576.006 to 576.022, and as specified by the Director of Agriculture. The Agricultural Development Division shall consist of a market development service and a commodity development service. [1955 c.572 §2; 1983 c.740 §221; 1985 c.623 §3]

576.010 [Repealed by 1953 c.119 §2]

**576.013 Purpose of market development and commodity development services; powers of department; limitations.**

(1) The purpose of the market development service of the Agricultural Development Division shall be to assist in the development of new markets or expand existing domestic and foreign markets for farm and food commodities produced or processed in this state. The purpose of the commodity development service of the Agricultural Development Division shall be to assist in the development and improvement of farm and food commodities and their values and uses.

(2) In furthering the purpose of the market development service, the department may:

(a) Collect and disseminate information relating to the availability, quality and uses of farm and food commodities produced or processed in this state, including participation in demonstrations, fairs and exhibits;

(b) Serve as an intermediary between prospective purchasers and sellers of farm and food commodities produced or processed in this state as to source of supply and demand;

(c) After notice to and with the approval of the Governor, represent the state in matters of legislation or rulemaking affecting

the development of markets for farm and food commodities produced or processed in this state;

(d) Cooperate with and aid producers, processors, distributors and prospective purchasers of farm and food commodities in establishing, or improving and maintaining, an efficient system of distribution and marketing of farm and food commodities;

(e) Investigate delays, embargoes, conditions and practices, charges and rates in the marketing, transportation and handling of farm and food commodities produced or processed in this state, and when an investigation discloses a probable violation of state or federal law, make recommendations to the proper state or federal authorities for appropriate action;

(f) Engage in negotiations with common and contract carriers and initiate or participate in the prosecution of proceedings before agencies engaged in freight rate regulation within or without this state in matters relating to the establishment of new freight rates, the modification of existing freight rates or to unjust, unreasonable or discriminatory rates or practices affecting the cost of transportation, production or processing of farm or food commodities produced or processed in this state;

(g) Investigate the advisability and need for establishment of terminal, regional, assembly, dock and other distributing facilities for the delivery, sale and distribution of farm and food commodities at or near the point of purchase or use, and advise and cooperate with public or private agencies or organizations in promoting the establishment, construction or acquisition of the facilities for public use and make recommendations as to their operations;

(h) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293;

(i) Consult with other states in development of joint programs for the establishment and development of domestic and foreign markets on a mutual basis; and

(j) Cooperate with the Economic Development Department of this state in foreign and domestic marketing matters of common interest.

(3) In furthering the purpose of the commodity development service, the department may:

(a) Collect and disseminate information relating to new or alternate crop production and marketing feasibilities to producers of farm and food commodities, and confer with

the New Crops Development Board of the department in regard to these matters;

(b) Assist the commodity commissions in carrying out mutual or joint scientific research efforts and mutual or joint development of the commercial values and new and additional uses of their commodities; and

(c) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293.

(4) Nothing in ORS 576.006 to 576.022 shall authorize, or modify the limitations on authority under ORS 561.170 for, the Agricultural Development Division, or its staff to:

(a) Engage in any commercial transaction involving farm or food commodities as purchaser, seller, broker or dealer; or

(b) Acquire or own any farm or food commodities or real property associated with them. [1955 c.572 §3; 1985 c.623 §4; 1989 c.966 §64]

576.015 [1953 c.489 §37; renumbered 576.053]

576.017 [1955 c.572 §4; repealed by 1973 c.794 §34]

576.018 [1985 c.623 §2; repealed by 1993 c.742 §60]

**576.019 Discrimination against any product or dealer prohibited.** In the performance of duties, under ORS 576.006 to 576.022, no official or employee of the department shall discriminate against any farm or food product, or against any producer, processor, distributor or dealer of any such products. [1955 c.572 §5]

576.020 [Repealed by 1953 c.119 §2]

**576.022 Authority and functions of Oregon State University unaffected; department may seek information from university.** Nothing in ORS 576.006 to 576.022 shall be construed to limit, alter, repeal or duplicate the existing authority and functions of Oregon State University enumerated in ORS 561.080 and full effect shall be given to the provisions of ORS 561.090 and 561.100. The department may call upon Oregon State University for such technical and statistical information as it may need and as the university may be able to provide. [1955 c.572 §7]

**576.024 Department authorized to inspect records and businesses for economic study purposes.** (1) It is necessary for the economy of this state, the livestock industry and the welfare of the consuming public that the department obtain statistical information for economic studies of the livestock industry including the volume of production of livestock in this state; the channels into which such livestock is marketed; the total consumption of meat in this state; the types and quantities consumed and the sources thereof; and such other informa-

tion as is pertinent to reveal additional potential markets for livestock produced in this state.

(2) In order to carry out and maintain this continuing study, the department is authorized during business hours to inspect the records of places or businesses which handle, store or sell meat animals, or meat as defined in ORS 619.010 to 619.071, 619.370 and 619.993.

(3) The department, after public hearing under ORS 183.310 to 183.550, may require periodic reporting from the places or businesses described in this section and require the furnishing to the department of the data or information which may be needed in continuing the comprehensive study as authorized in this section. [1967 c.388 §2; 1973 c.174 §19; 1973 c.794 §29; 1983 c.740 §222]

576.030 [Repealed by 1953 c.119 §2]

**576.035 Market news service in Klamath Basin, central Oregon and Malheur areas.** The State Board of Higher Education, acting through the Federal Cooperative Extension Service of Oregon State University, shall cooperate with the Agriculture Marketing Service of the United States Department of Agriculture and with the appropriate offices of adjoining states to establish and maintain a food product market news service in the Klamath Basin and provide such services for the central Oregon and Malheur areas. [1961 c.560 §1]

576.040 [Repealed by 1953 c.119 §2]

576.041 [1967 c.265 §1; repealed by 1971 c.28 §1]

576.043 [1967 c.265 §2; repealed by 1971 c.28 §1]

## COMMODITY COMMISSIONS GENERALLY

**576.044 General supervisory authority of division.** Notwithstanding any other provision of this chapter and ORS 577.110 to 577.605 and ORS chapters 578 and 579, in order to facilitate the performance of commodity commissions in attaining their intended purposes, the Agricultural Development Division of the State Department of Agriculture has the following duties, functions and powers:

(1) To monitor the practices or methods used or proposed by any commission in carrying out its goals and needs as disclosed by its budget;

(2) To promote cooperation between the several commissions and to assist in the interchange of information and experience between the commissions;

(3) To carry out the assigned organizational procedures under this chapter and ORS chapters 577, 578 and 579 relating to the creation, modification or dissolution of

any commission, including the election or appointment of members of the commission;

(4) To examine and comment on any final budget or order submitted to the Director of Agriculture pursuant to any provision of this chapter and ORS chapters 577, 578 or 579; and

(5) To promulgate rules to carry out the provisions of this chapter, ORS 577.110 to 577.605 and ORS chapters 578 and 579. [1977 c.198 §6; 1985 c.623 §5]

576.045 [1967 c.265 §3; repealed by 1971 c.28 §1]

576.047 [1967 c.265 §4; repealed by 1971 c.28 §1]

576.049 [1967 c.265 §5; repealed by 1971 c.28 §1]

576.050 [Repealed by 1953 c.119 §2]

**576.051 Definitions for ORS 576.051 to 576.584.** As used in ORS 576.051 to 576.584, unless the context requires otherwise:

(1) "Commercial channels" means the sale of the commodity for which a commission is established for use as food, industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom.

(2) "Commission" means a commodity commission established under ORS 576.051 to 576.584.

(3) "Commodity" means any distinctive type of agricultural, horticultural (including floricultural), viticultural, vegetable, animal or seafood product, or any class, variety or utilization thereof, in its natural or processed state, including bees and honey but not including timber or timber products. The director may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of ORS 576.051 to 576.584.

(4) "Department" means the State Department of Agriculture.

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

(6) "First purchaser" means any person who buys the commodity for which a commission is created from the producer in the first instance, or handler who received the commodity in the first instance from the producer for resale or processing.

(7) "Handler" means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is created, whether as an owner, agent, employee, broker or otherwise.

(8) "Producer" means a person producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for mar-

ket, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. [Formerly 576.005; amended by 1957 c.447 §1; 1959 c.596 §1; 1977 c.198 §7]

**576.053 Short title.** ORS 576.051 to 576.584 and 576.991 (2) and (3) may be known and cited as the Commodity Commission Act. [Formerly 576.015; 1983 c.740 §223]

**576.055 Petition for establishment of commission for a particular commodity.**

(1) Any 25 or more persons interested in the production of a particular commodity for which it is proposed to establish a commission may file a petition with the department asking that a commission be established for such commodity. The petition shall set forth:

(a) The name of the commodity for which the commission is to be established, and a description of it by genus, class, variety or other accurate and definite term.

(b) A concise statement of the reasons the establishment of a commission is requested.

(c) A request that a referendum be held among the producers of the commodity on the question of the establishment of a commission.

(d) Any desired limitation of the powers and duties provided for in ORS 576.305.

(e) The name and address of the individual who is authorized to represent the petitioners in all matters related to the establishment of the proposed commission as attorney in fact.

(2) The petition may also provide:

(a) Within the limits prescribed by ORS 576.205, for the number of commissioners on the commission or for their election by the producers in a referendum, or both. If the petition includes provisions for election of commissioners, it shall also provide, subject to reasonable rules and regulations made by the department, for qualifications and nomination of candidates, including a requirement that candidates reside in an area producing the commodity, terms of office and recall of commissioners, the filling of vacancies and the conduct of the election.

(b) That the several commissioners be appointed or elected from stated geographical areas.

(c) That the maximum permissible assessment under ORS 576.325 be limited to a designated amount or percent.

(d) For an alternative method of levy, assessment and collection of an assessment upon producers for the support of the commission. [1953 c.489 §2; subsection (2) formerly part of 576.295; 1957 c.447 §2; 1959 c.596 §2; 1965 c.515 §1]

576.060 [Repealed by 1953 c.119 §2]

**576.065 Petition filing fee; advancing moneys to pay cost of proposed hearing and referendum.** (1) The petitions provided for in ORS 576.055 shall be accompanied by a filing fee of \$250.

(2) The department shall prepare and deliver to the attorney in fact of the petitioners an original budget estimate, which shall include the cost of the preparation of the estimate, the cost of the proposed hearings and the cost of the proposed referendum. The petitioners, within 30 days after their receipt of the original budget estimate by their attorney in fact, shall remit to the department the difference between the filing fee of \$250 and the original budget estimate.

(3) The department at any time after delivery of the original budget estimate may prepare and deliver to the attorney in fact of the petitioners an additional budget estimate to cover the costs of holding the hearings and the referendum. The petitioners, within 30 days after their receipt of the additional budget estimate by their attorney in fact, shall remit to the department the amount of the additional budget estimate.

(4) If the petitioners fail to remit as provided in subsection (2) or (3) of this section, or if for any other reason the proceedings for the establishment of a commission are terminated, or if as a result of the referendum the commission is created or is disapproved, the balance of the filing fee or total budget estimate or both remaining unexpended by the department shall be returned to the petitioners by the department. The commission shall return to the petitioners from the first moneys collected by it the difference between the filing fee and the total budget estimate and the amount, if any, returned by the department. [1953 c.489 §3; 1957 c.447 §3; 1959 c.596 §3]

**576.070** [Repealed by 1953 c.119 §2]

**576.075 Hearings regarding establishment of commodity commission; notice of hearings.** (1) Within 60 days after the petition has been filed with the department and upon payment of the difference between the filing fee of \$250 and the total budget estimate, the department shall cause notices to be given of the proposed hearings in each of the counties of the state where the commodity is grown or produced upon the question of the desirability and necessity of creating such a commission, upon the propriety of the petition and other proceedings under ORS 576.051 to 576.584 and upon other relevant questions. All producers and all other interested parties have a right to attend such hearings and to be heard.

(2) The department shall hold a hearing or hearings in each congressional district in which during the last preceding crop season

or year at least five percent of the total production of the commodity unit was produced, as determined by the department.

(3) The notices of hearing shall be:

(a) Published once at least 14 days prior to the date of hearing in a newspaper of general circulation in the state, and once in a newspaper of general circulation in each congressional district in which a hearing is to be held. In the discretion of the department such notice may also be published in a newspaper of general circulation in each county in which during the last preceding crop season or year at least five percent of the total production of the commodity unit was produced.

(b) Forwarded to the county clerk of all counties in this state. The county clerk shall post such notice in a conspicuous place in the county courthouse. [1953 c.489 §4; 1957 c.447 §4; 1959 c.596 §4]

**576.078 When hearings may be dispensed with.** Notwithstanding any other provision of ORS 576.051 to 576.584, if a petition filed with the department as provided by ORS 576.055 is signed by more than 50 percent of the producers of the commodity in the state, or if it is signed by producers who produced more than 50 percent of the total quantity of the commodity produced by producers in the state during the last preceding crop season or year, and if such petition contains a statement that the petitioners do not desire that hearings be held prior to a referendum upon the proposition of the creation of a commission:

(1) No hearings shall be held and no determination of need for the creation of a commission sufficient to justify the holding of a referendum thereon shall be made by the department prior to the referendum upon the proposition of the creation of a commission.

(2) Upon payment of the difference between the filing fee of \$250 and the total budget estimate, the department shall set the date for and hold a referendum upon the proposition of the creation of a commission, to be held within four months. [Formerly part of 576.085; 1959 c.596 §5]

**576.080** [Repealed by 1953 c.119 §2]

**576.085 Determination by department regarding need for commodity commission.** (1) After the hearings provided for in ORS 576.075, the department shall determine upon the facts presented and other relevant data and information available to it whether or not there is need for the creation of a commission in the interest of the general welfare of the producers of the commodity sufficient to justify the holding of a referendum thereon. It shall record the determi-

nation, with its reasons for it, in the office of the Secretary of State.

(2) Subsequent petitions relating to the same commodity may not be filed or action taken thereon within one year from the date the department has recorded a determination denying the need for the creation of a commission as to such commodity.

(3) The department's determination of need for the creation of a commission shall be based upon a consideration of the following factors as they may be applicable to any commodity:

(a) The current market price to producers.

(b) The costs of production, including all elements of cost.

(c) Market price trends.

(d) Stability of prices.

(e) Relationship between the factors set forth in paragraphs (a), (b), (c) and (d) of this subsection.

(f) Commodity utilization and the possibility of increasing commodity utilization by research, promotive advertising, improved marketing practices, and improving time or place utility. [1953 c.489 §5; 1957 c.447 §5; part renumbered 576.078; 1959 c.596 §6]

576.090 [Repealed by 1953 c.119 §2]

**576.091 Withdrawal of petition.** (1) At any time after a petition is filed with the department under ORS 576.055 and before the date set for the referendum by the department under ORS 576.095, a written request may be filed with the department asking that the petition be withdrawn and that the department take no further action or proceedings to establish a commission as requested in the petition.

(2) The written request shall be signed by more than two-thirds of the persons whose signatures appear on the petition.

(3) Upon receiving the written request, the department shall take no further action or proceedings to establish a commission as requested in the petition. The balance of the filing fee or total budget estimate or both remaining unexpended by the department shall be returned to the petitioners or their attorney in fact by the department.

(4) If a petition is withdrawn and the department takes no further action or proceedings to establish a commission as requested in the petition as provided in this section, subsequent petitions relating to the same commodity may be filed and action and proceedings taken thereon. [1959 c.596 §72]

**576.095 Referendum regarding establishment of commodity commission after determination by department.** (1) After

the department has made and recorded its determination that there is need for the creation of a commission sufficient to justify the holding of a referendum thereon, it shall within a reasonable time thereafter hold a referendum upon the proposition of the creation of the commission.

(2) Notice of a referendum upon the proposition of the creation of a commission shall be given in the same manner as notice of hearings is required to be given by ORS 576.075. The question shall be submitted by ballots upon which the words "For creation of a \_\_\_\_\_ (here to be inserted the name of the commodity) commission" and "Against creation of a \_\_\_\_\_ (here to be inserted the name of the commodity) commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. All producers of the particular commodity in the state are eligible to vote in the referendum, provided they shall register with the department their names and such other pertinent information as the department may require. The department shall provide a period of not less than 20 days during which the producers may register. [1953 c.489 §6; 1957 c.447 §6; 1959 c.596 §7]

576.100 [Repealed by 1953 c.119 §2]

**576.105 Payment of expenses of hearings and referendum.** The department shall pay, from the amounts paid to it under ORS 576.065, all the expenses resulting from the giving of notices mentioned in ORS 576.075 and 576.095, and from conducting the hearings and referenda, held for the purpose of creating a commission. [1953 c.489 §7]

576.110 [Repealed by 1953 c.119 §2]

**576.115 Supervision of hearings and referendum by department; informalities do not invalidate referendum.** (1) The department shall supervise and conduct any referenda and hearings held under ORS 576.051 to 576.584.

(2) No informalities in the conduct of a referendum or in any matters relating thereto shall invalidate any referendum held under ORS 576.051 to 576.584, or the result thereof, if notice was given in substantially the same manner as provided in ORS 576.051 to 576.584 and if the referendum was fairly conducted.

(3) No proposition submitted by a referendum under ORS 576.051 to 576.584 shall be declared approved unless the proposition is favored in the manner as necessary for the creation of a commission, as provided in ORS 576.125 (1).

(4) Preceding any referendum held pursuant to ORS 576.051 to 576.584, the department shall determine the number of

producers in this state and their total production in the last preceding crop season or year of the commodity for which a commission is proposed. The department's determination shall be predicated upon available relevant and reliable information tending to establish such facts, from statistics of the U. S. Department of Agriculture, U. S. Department of Commerce, Oregon State University or other recognized authoritative sources; or from a survey of the commodity industry in the state conducted by the department, if reliable information needed is not available from such recognized authoritative sources. At the request of the department any handlers or other persons shall furnish to the department any information available relevant to the determination required of the department.

(5) All information submitted by a handler or other person shall be confidential and shall not be disclosed by the department or any of its officials or employees except to the extent that such disclosure is necessary in any proceeding instituted to challenge the correctness of the department's determination as permitted in subsection (6) of this section.

(6) The department's determination of the number of producers and their total production shall be filed with the county clerk and in the office of the county agent of each county. Any appeal from such determination must be instituted by filing a complaint or other pleading in an appropriate proceeding in the circuit court within 30 days after the date the determination is filed. [1953 c.489 §8; 1957 c.447 §7]

576.120 [Repealed by 1953 c.119 §2]

**576.125 Creation of commission; filing referendum result.** (1) The department shall declare a commission created, if the proposition received an affirmative vote in the referendum of two-thirds of the producers voting and if the total voting producers are the producers of more than one-third of the total quantity of the commodity produced by producers in the state in the last preceding crop season or year, as determined by the department.

(2) Within 10 days of the date of a referendum the department shall file with the Secretary of State a declaration of the result of the referendum. The Secretary of State shall record the declaration in an appropriate book in the office of the Secretary of State.

(3) If a referendum does not result in the creation of a commission, subsequent petitions relating to the same commodity may not be filed or action taken thereon within one year from the date of the filing of the

department's declaration of the result of the referendum with the Secretary of State. [1953 c.489 §9; 1955 c.732 §2; 1957 c.447 §8]

576.130 [Repealed by 1953 c.119 §2]

**576.135 Oregon Dairy Products Commission; public information and education; assessment on dairy products.** (1) The Oregon Dairy Products Commission, established by ORS chapter 582, shall continue in full force and effect as a commission established pursuant to ORS 576.051 to 576.584 from the time the rights, powers, privileges and immunities of such commission expire pursuant to the laws relating thereto. At the time ORS 576.051 to 576.584 become applicable to such commission, it shall be deemed to have been created in all respects pursuant to ORS 576.051 to 576.584 and shall be vested with all of the rights, powers, privileges and immunities duly conferred upon commissions created pursuant to ORS 576.051 to 576.584.

(2) The commission shall provide a public information and nutrition education service and a market development and research service. The performance of these services shall be coordinated by the principal administrative officer of the commission appointed pursuant to ORS 576.305 (8).

(3) In addition to the assessment authorized by ORS 576.325, the commission may assess, levy and collect an assessment, based upon the butterfat weight of all dairy products processed or manufactured in this state, and sold in this state, to pay the expenses of performing the public information and nutrition education service. The amount of the assessment is one-fourth of a cent per pound of butterfat. The assessment shall be levied at the time of sale of the processed or manufactured dairy product and shall be reported and paid to the commission by the first processor in the manner and at the time prescribed by the commission.

(4) In addition to the budget and expenditure limitations in ORS 576.420 to 576.445, the commission shall budget and allocate funds for the services described in subsection (2) of this section in proportion to the program costs for each service. [1953 c.489 §34; 1983 c.438 §1]

576.140 [Repealed by 1953 c.119 §2]

**576.145 Oregon Filbert Commission.** The Oregon Filbert Commission, established by ORS chapter 580, shall continue in full force and effect as a commission established pursuant to ORS 576.051 to 576.584 from the time the rights, powers, privileges and immunities of such commission expire pursuant to the laws relating thereto. At the time ORS 576.051 to 576.584 become applicable to such commission, it shall be deemed to have been created in all respects pursuant to ORS

576.051 to 576.584 and shall be vested with all of the rights, powers, privileges and immunities duly conferred upon commissions created pursuant to ORS 576.051 to 576.584. [1953 c.489 §35]

576.150 [Repealed by 1953 c.119 §2]

**576.155 Oregon Dungeness Crab Commission.** (1) There is created the Oregon Dungeness Crab Commission. The commission shall be considered to have been created in all respects pursuant to ORS 576.051 to 576.584 and is vested with all the duties, functions, powers, rights and liabilities of commissions created pursuant to ORS 576.051 to 576.584. All producers and handlers of dungeness crab are subject to the duties, rights and liabilities provided in ORS 576.051 to 576.584.

(2) The commission shall consist of seven members appointed by the Director of Agriculture. Five members shall be producers and two shall be handlers who are not producers. In making appointments the director shall consider recommendations made to the director by producers or producers' organizations. [1977 c.526 §2]

576.160 [Repealed by 1953 c.119 §2]

**576.165 Oregon Salmon Commission.** (1) There is created the Oregon Salmon Commission. The commission shall be considered to have been created in all respects pursuant to ORS 576.051 to 576.584 and is vested with all the duties, functions, powers, rights and liabilities of commissions created pursuant to ORS 576.051 to 576.584. All producers, purchasers and handlers of salmon are subject to the duties, rights and liabilities provided in ORS 576.051 to 576.584.

(2) The commission shall consist of seven members appointed by the Director of Agriculture. Five members shall be licensed commercial fishermen who participate in ocean troll salmon fisheries, each of whom resides in a different one of the five coastal geographic regions described in the commercial fishing harvest areas established by the State Department of Fish and Wildlife, and two members shall be licensed fish processors.

(3) Notwithstanding ORS 576.051 to 576.584 the Oregon Salmon Commission shall assess only those salmon caught in ocean troll salmon fisheries. [1983 c.688 §2; 1989 c.185 §1]

576.170 [Repealed by 1953 c.119 §2]

**576.175 Oregon Grains Commission.** (1) There is created the Oregon Grains Commission. The commission shall be considered to have been created in all respects pursuant to ORS 576.051 to 576.584 and is vested with all the duties, functions, powers, rights and liabilities of commissions created pursuant to ORS 576.051 to 576.584. All producers, pur-

chasers and handlers of barley, rye or triticale are subject to the duties, rights and liabilities provided in ORS 576.051 to 576.584.

(2) Notwithstanding ORS 576.051 to 576.584, with regard to the levy and collection of an assessment by the commission, the assessment shall be levied and assessed to the grower at the time of sale, and shall be deducted by the first purchaser from the price paid to the grower at the time of the sale, or, in case of a lienholder who may possess such grains under the lien, the assessment shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the grain is pledged or mortgaged. The assessment shall be deducted whether the grain is stored in this or any other state.

(3) The assessment constitutes a lien prior to all other liens and encumbrances upon such grain, except liens created by operation of a statute of this state.

(4) The commission shall consist of five members appointed by the Director of Agriculture. One member shall be appointed to represent the area west of the Cascade Mountains that does not include Jackson, Klamath and Lake Counties. One member shall be appointed to represent Jackson, Klamath and Lake Counties. Two members shall be appointed to represent Umatilla, Morrow, Gilliam, Sherman, Wasco, Jefferson, Crook, Deschutes, Grant, Hood River and Wheeler Counties. One member shall be appointed to represent that area east of the Cascade Mountains not otherwise represented. [1989 c.748 §2; 1991 c.894 §1]

576.180 [Repealed by 1953 c.119 §2]

576.190 [Repealed by 1953 c.119 §2]

576.200 [Repealed by 1953 c.119 §2]

**576.205 Appointment of members of commission; number of producers and handlers.** (1) Subject to ORS 576.055 (2)(a), the commission shall be composed of from 5 to 11 members, as the director determines, all of whom shall be appointed by the director. In making appointments of members of the commission the director shall take into consideration any nominations or recommendations made to the director by producers or producers' organizations. Each member shall continue in office until a successor is appointed.

(2) A majority of the members shall be producers and at least one member may be a handler. All members other than handlers shall be producers. [1953 c.489 §11; 1957 c.447 §9; 1959 c.596 §8; 1977 c.198 §8]

576.210 [Repealed by 1953 c.119 §2]

**576.215 Ex officio members of commission.** The Director of Agriculture and the dean of the school of agriculture of

Oregon State University, or their respective official representative, shall be ex officio members of the commission, without right to vote. In the case of a seafoods commission, the chairman of the State Fish and Wildlife Commission or the official representative of the chairman shall also be an ex officio member of the commission, without right to vote. ORS 576.205 and 576.225 to 576.255 do not apply to ex officio members. [1953 c.489 §12; 1957 c.447 §10; 1959 c.596 §9]

**576.220** [Repealed by 1953 c.119 §2]

**576.225 Qualifications of members.** (1) Each member of the commission shall have the following qualifications which shall continue during the term of office of the member:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of the state.

(c) Each shall have demonstrated through membership in a producers' organization, the public service or otherwise, an active interest in the development of the commodity industry in Oregon.

(2) The producer members shall be and have been actively engaged in producing, and the handler members in the handling of, the commodity for which the commission is established, in this state, for a period of at least five years, and shall derive a substantial proportion of their incomes from the sale of the commodity. [1953 c.489 §13; 1957 c.447 §11]

**576.235 Terms of members.** Except when provision is made for their election, members of the commission shall be appointed within 30 days after the filing of the declaration by the department with the Secretary of State, and the original members shall be appointed as follows:

(1) Approximately, as the director determines, one-third of the members for a term ending June 30 next following.

(2) One-third of the members for a term ending one year from June 30 next following.

(3) One-third of the members for a term ending two years from June 30 next following.

Thereafter, each member shall be appointed for a term ending three years from the date of expiration of the term for which a predecessor was appointed, except in case of a vacancy when the appointee shall serve the unexpired part of the term of the member whom the appointee replaced. [1953 c.489 §14; 1965 c.515 §2; 1977 c.198 §9]

**576.245 Office vacant when member ceases to be qualified.** The director shall immediately declare the office of any appointed member of the commission vacant

whenever the director finds that such member has ceased to be an active producer or handler in this state, has become a resident of another state or is unable to perform the duties of office. [1953 c.489 §15; 1957 c.447 §12; 1965 c.515 §3; 1977 c.198 §10]

**576.255 Removal of members.** (1) The director may remove any member of the commission for inefficiency, neglect of duty or misconduct in office, after a public hearing thereon and after serving upon the member a copy of the charges against the member, together with a notice of the time and place of the hearing, at least 10 days prior to such hearing. At the hearing the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged against the member.

(2) In every case of removal, the director shall file in the office of the Secretary of State a complete statement of all charges against the member, and the findings of the director thereon, together with a record of the entire proceedings had in connection therewith. [1953 c.489 §16; 1965 c.515 §4; 1977 c.198 §11]

**576.265 Travel and other expenses of members.** Members, officers and employees of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The commission shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses. [1953 c.489 §17; 1959 c.596 §10]

**576.275 Meeting place of commission.** The commission shall establish a meeting place anywhere within this state it selects, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the commission or be affected by its acts. [1953 c.489 §18]

**576.285 Commission organization; meetings.** The commission shall meet as soon as practicable for the purposes of organizing. It shall elect a chairman and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance, and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months, and at such other times as called by the chairman. The chairman may call special meetings at any time, and shall call a special meeting when requested by two or more members of the commission. [1953 c.489 §19]

**576.295 Limitation on commission's powers and duties by original petition or**

**subsequent referendum.** The commission established by the department's declaration after the referendum as provided in ORS 576.125 has the powers and duties provided in ORS 576.051 to 576.584, except as those powers and duties are limited in the petition as provided in ORS 576.055 (1)(d), or pursuant to a referendum held under ORS 576.555 to 576.575. [1953 c.489 §10; 1955 c.732 §3; part renumbered 576.055; 1959 c.596 §11]

**576.305 Authority of commission generally.** The commission may:

(1) Conduct scientific research to discover and develop the commercial value of the commodity and products thereof.

(2) Disseminate reliable information founded upon the research undertaken under ORS 576.051 to 576.584, showing the value of the commodity and its products for any purpose for which they may be found useful and profitable.

(3) Study legislation, state and federal, with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the commodity industry, and represent and protect the interests of the commodity industry with respect to any legislation or proposed legislation or executive action which may affect that industry.

(4) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by ORS 576.051 to 576.584.

(5) Enter into contracts which it deems appropriate to the carrying out of the purposes of the commission as authorized by ORS 576.051 to 576.584.

(6) Borrow money, not in excess of its estimate of its revenue from the current year's crop, catch or animals, so that the crop, catch or animals responsible for the accumulation of funds may receive the benefits of the efforts for which the funds are used.

(7) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the commission as authorized by ORS 576.051 to 576.584.

(8) Appoint subordinate officers and employees of the commission and prescribe their duties and fix their compensation.

(9) Cooperate with any local, state or national organization or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the commission; and enter into contracts with such organizations or agencies for carrying on joint programs.

(10) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency deemed by the commission to be beneficial to the commodity industry of this state, and expend funds in connection therewith, provided that such program is compatible with the powers conferred by ORS 576.051 to 576.584.

(11) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the assessment provided for in ORS 576.325.

(12) Adopt, rescind, modify or amend all proper regulations, orders and resolutions for the exercise of its powers and duties. A copy of any of the commission's orders, other than orders referred to in ORS 576.375, 576.391 and 576.445, shall be filed with the department, and a copy mailed to the county extension agent of the counties in which the commodity is produced.

(13) Enter into contracts for advertising the commodity and to develop new markets through such advertising.

(14) Establish a reasonable per diem allowance, in addition to expenses under ORS 576.265, to members of the commission while actually engaged in the performance of their official duties, including necessary travel time. [1953 c.489 §20; 1957 c.447 §13; 1959 c.596 §12]

**576.306 Independent contractors performing services for commission.** (1) The commission may contract with an independent contractor for the performance of any services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. ORS chapters 240 and 279 and ORS 291.021 do not apply to the commission in obtaining such services, except that no contract for such services shall take effect until approved by the department as provided in subsection (7) 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, 279 and 283 and ORS 291.038 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, 237, 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 chapters 657 and 657A and ORS 670.600.

(5) 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) A contractor described in subsection (1) of this section shall 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) The department 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, non-discrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(8) 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) Except as provided in subsection (8) of this section, the department may promulgate any rules necessary for the administration and enforcement of this section. [1991 c.948 §2]

**576.307 Services, facilities and materials for commission.** (1) Upon request by the commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal required by the commission and for the furnishing of professional services rendered by independent contractors with the state to the commission under ORS 279.545 to 279.748.

(b) Provide for the furnishing of printing and multiple duplication work to the commission under ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products, agricultural or manufactured, shall not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the commission under ORS 279.828.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the commission under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the commission under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) The commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(3) Upon request by the commission, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under this subsection as the department determines is adequate to reimburse it for the costs necessary to perform such services. [1959 c.596 §32; 1967 c.419 §35; 1993 c.500 §48]

**576.309 Commission furnishing services, facilities and materials to other state agencies.** The commission may elect to furnish services, facilities and materials to other commodity commissions created under ORS 576.051 to 576.584 or ORS chapter 578 or 579 and to state agencies and officers under ORS 283.110. Upon requisition by the commission, any other commodity commission created under ORS 576.051 to 576.584 or ORS chapter 578 or 579 or any state agency or officer may furnish services, facilities and materials to the commission under ORS 283.110. [1959 c.596 §33]

**576.311 Commission exempt from certain financial administration laws.** Except as otherwise provided in ORS 576.051 to 576.584, ORS 291.026, 291.202 to 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to 293.346 and 293.590 to 293.640 do not apply to the commission or to the administration and enforcement of ORS 576.051 to 576.584. [1959 c.596 §34]

**576.315 Gifts and grants.** The commission may accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission. [1953 c.489 §29]

**576.320 Commission employees not subject to state personnel compensation plans; commission not subject to office space regulation; fees for administrative services.** (1) Notwithstanding any other provision of law, wages or salaries of employees of a commodity commission created under this chapter or ORS chapter 577, 578 or 579 are not subject to personnel compensation plans for state employees established by the Oregon Department of Administrative Services under ORS 240.235 to 240.250.

(2) Notwithstanding any other provision of law, a commodity commission created under this chapter or ORS chapter 577, 578 or 579 is not required to utilize office space furnished or obtained by the Oregon Department of Administrative Services as provided in ORS chapter 276.

(3) The State Department of Agriculture may charge and collect from each commodity commission created under this chapter or ORS chapter 577, 578 or 579 an assessment or fee to reimburse the department for supervisory or administrative functions the department is required by law to perform with regard to commodity commissions. The amount of the assessment or fee shall be established by rule. [1993 c.561 §2]

Note: 576.320 was added to and made a part of chapter 576 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**576.325 Levy of assessment on commodity sales; use of assessment proceeds.**

(1)(a) The 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 its rivers or the offshore waters, but not the Columbia River, for handling within this state, and sold in commercial channels; but no such assessment shall apply to any transaction which occurred prior to the date the commission order assessing such 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 the commodity.

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

(2) The amount of the assessment provided for in subsection (1) of this section shall not exceed one and one-half percent of the average unit price received by the producer on the farm after severance, or in the boat after catch, and before packaging or processing, during the three years immediately preceding, unless a greater assess-

ment, which in no case shall exceed 10 percent, is specifically provided:

(a) In the petition provided for in ORS 576.055; or

(b) By a referendum held under ORS 576.555 to 576.575.

(3) A commission of livestock producers may, in lieu of the levy and assessment procedures provided in subsections (1) and (2) of this section, provide that an identical assessment shall be levied and collected against each animal, but in such case the assessment shall not exceed one and one-half percent of the average price per animal received by livestock producers during the three years immediately preceding, for the class of animals in Oregon for which the commission was created, such as cattle, sheep or swine, unless a greater assessment, which in no case shall exceed 10 percent, is specifically provided as authorized by paragraph (a) or (b) of subsection (2) of this section. The commission in ascertaining the average price received by producers may take into consideration data and estimates of the United States Department of Agriculture, Oregon State University and other reliable sources for the three calendar years immediately preceding the date of the determination.

(4) The assessment shall be levied and assessed to the producer at the time of sale and shall be deducted by the first purchaser from the price paid to the producer. [1953 c.489 §21; 1957 c.447 §14; 1959 c.596 §13; 1983 c.645 §1]

**576.335 First purchaser of commodity to make reports and pay assessment moneys.**

(1) The first purchaser shall make reports to the commission on forms prescribed by the commission.

(2) No first purchaser shall fail to make the report, or make the report falsely.

(3) The commission shall fix dates upon which reports shall be made thereto by all first purchasers. Upon such dates all assessment moneys collected by the purchaser shall be turned over to the commission which shall issue receipts therefor and make suitable records thereof.

(4) Any first purchaser who fails to deduct an assessment at the time of sale shall report and pay to the commission the assessment which was due thereon. The provisions of ORS 576.355 also apply to a producer required to report and pay assessments. [1953 c.489 §§24, 26; 1959 c.596 §14; subsection (4) enacted as 1965 c.211 §3]

**576.345 Producer to make reports of and pay assessment moneys on certain sales.**

(1) When a first purchaser lives or has an office in another state or is a federal or other governmental agency, the producer

shall report all sales made to such purchaser on forms provided by and pay the assessment moneys directly to the commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission.

(2) Any producer who performs the handling or processing functions on all or a part of the production of the commodity, which normally would be performed by another person as the first purchaser thereof, shall report sales of such commodity of the production of the producer on forms provided by and pay the assessment moneys directly to the commission, unless the first purchaser from such producer voluntarily makes the proper deduction and remits the proceeds to the commission. [1953 c.489 §25; 1959 c.596 §15; subsection (2) enacted as 1959 c.596 §74]

576.350 [1957 c.447 §18; repealed by 1959 c.596 §90]

**576.351 Records of person required to pay assessment.** (1) Each person required to pay an assessment on a commodity under ORS 576.051 to 576.584 shall keep accurate records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) The commission or any person authorized by the commission may inspect and audit the records referred to in subsection (1) of this section for the purpose referred to in subsection (1) of this section. The commission or any person authorized by the commission may also inspect and audit the records of a producer who sells a commodity to a first purchaser if such inspection and audit are necessary for the purpose referred to in subsection (1) of this section.

(3) No person shall refuse to permit an inspection and audit under subsection (2) of this section during business hours. [1959 c.596 §76]

**576.355 Penalty for delaying transmittal of funds.** In addition to the penalties prescribed in ORS 576.991, any first purchaser or other person who delays transmittal of funds beyond the time set by the commission shall pay five percent of the amount due for the first month of delay and one percent of the amount due for each month of delay thereafter. [1953 c.489 §28]

**576.365 Penalty for refusal to turn over assessment moneys to commission.** If any first purchaser, or other person responsible for transmittal of the assessment moneys to the commission, willfully refuses to turn over assessment moneys collected, the first purchaser or other person shall pay an additional fine equal to twice the amount

of the assessment moneys so withheld. [1953 c.489 §27; 1959 c.596 §16]

**576.375 Payment of commission moneys to authorized agent; deposits and withdrawals.** (1) All moneys received by any person from the assessment levied under the authority of ORS 576.325 and all other moneys received by the commission shall be paid to the authorized agent of the commission. As soon as possible after the authorized agent receives such moneys, the authorized agent shall deposit such moneys in one or more separate accounts in the name of the commission. The commission shall designate such accounts and such banks or trust companies.

(2) No moneys shall be withdrawn from or paid out of such accounts except upon order of the commission, and upon checks or other orders upon such accounts signed by the secretary-treasurer or such other member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. A receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order, shall be kept.

(3) All moneys referred to in subsection (1) of this section shall be used by the commission only for the payment of the expenses of the commission in carrying out the powers conferred on the commission. [1953 c.489 §22; 1959 c.596 §17; 1967 c.451 §25]

576.380 [1957 c.447 §16; repealed by 1959 c.596 §90]

**576.385 Bond or letter of credit required of person authorized to receive or disburse commission moneys.** Any person authorized by the commission to receive or disburse moneys as provided in ORS 576.375 shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case in favor of the commission and the State of Oregon, in such amount equal to the maximum amount of moneys the commission determines such person will have subject to control at any one time and upon such conditions as the commission shall prescribe. The cost of the bond or letter of credit shall be paid by the commission. [1953 c.489 §23; 1957 c.447 §20; 1959 c.596 §19; 1991 c.331 §86]

576.390 [1957 c.447 §15; repealed by 1959 c.596 §90]

**576.391 Cancellation of uncollectible assessments.** (1) The commission by order may cancel an assessment which has been delinquent for five years or more, if it determines that:

(a) The amount of the assessment is less than \$1 and that further collection effort or

expense does not justify the collection thereof, or

(b) The assessment is wholly uncollectible.

(2) The order shall contain adequate information as to why the assessment cannot be collected. [1959 c.596 §73]

**576.395 Records and accounts of commission.** The commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State. [1953 c.489 §30; subsection (2) enacted as 1959 c.596 §75; 1973 c.794 §30]

**576.405 Nonliability of state for acts or omissions of commission or agents.** The State of Oregon is not liable for the acts or the omissions of the commission or agents or officers thereof. [1953 c.489 §36]

**576.410 "Fiscal year" defined.** As used in ORS 576.415 to 576.445, "fiscal year" means the fiscal year commencing on July 1 and ending on June 30. [1959 c.596 §21]

**576.415 Limitation of expenditures of newly created commission; preparation of first budget.** (1) If the commission is created during the period commencing on April 1 and ending on June 30 of a fiscal year, no expenditures of moneys for such fiscal year may be made or incurred by or under the commission under ORS 576.051 to 576.584 other than:

(a) Moneys returned to petitioners by the commission under ORS 576.065 (4).

(b) Moneys reasonably necessary to pay the organizational expenses of the commission.

(c) Moneys reasonably necessary to pay expenses in connection with the assessment, levy and collection of the first assessment under ORS 576.325 by the commission.

(d) Moneys reasonably necessary to pay expenses in connection with the preparation and adoption of the first budget of the commission.

(2)(a) If the commission is created during the period commencing on April 1 and ending on the following March 31, no expenditures of moneys for the fiscal year commencing on July 1 following the commencement of such period may be made or incurred by or under the authority of the commission under ORS 576.051 to 576.584 unless paragraphs (b) and (c) of this subsection are complied with.

(b) As soon as possible after it is organized, the commission shall prepare a final budget and adopt it as the budget of the commission for the fiscal year referred to in paragraph (a) of this subsection. At least one

copy of the final budget, together with an affidavit of the commission setting forth the pertinent facts relating to the preparation and adoption thereof, shall be filed in the office of the commission, and shall be available for public inspection under reasonable circumstances.

(c) The commission shall send a copy of the final budget and of the affidavit to the director. The director shall examine the final budget and the affidavit and, if the director determines that the estimated expenditures in the final budget are in conformity with the authority of the commission and are appropriate to accomplish the goals and needs of the commission and that the facts set forth in the affidavit indicate that the final budget was prepared and adopted in accordance with law, shall certify such determinations on the copy of the final budget. If the director determines that the final budget fails to meet these requirements in any respect, the director shall immediately notify the commission of the particular failures and the commission, as soon as possible, shall take such steps as are possible and necessary to remedy the defects. The certified copy of the final budget shall be retained by the director and shall be available for public inspection under reasonable circumstances. [1959 c.596 §§22, 23; 1977 c.198 §12; 1993 c.98 §18]

**576.420 Expenditures prohibited unless budget procedure complied with.** Except as otherwise provided in ORS 576.415 (1) or (2), no expenditures of moneys for a fiscal year may be made or incurred by or under the authority of the commission under ORS 576.051 to 576.584 unless ORS 576.425 and 576.430 are complied with. [1959 c.596 §24]

**576.425 Proposed budget; sending copies to county extension agents; public meeting.** (1) Except as otherwise provided in ORS 576.415 (2), the commission shall prepare each year a proposed budget of the commission for the next succeeding fiscal year. The commission shall send at least one copy of the proposed budget to each county extension agent, and such copy or copies shall be available for public inspection under reasonable circumstances in the office of such county extension agent.

(2) The commission shall call and hold at least one public meeting upon the proposed budget. In selecting a time and place for a meeting the commission shall be guided by consideration for the convenience of the majority of the producers of the commodity for which the commission was created. At a meeting any producer of the commodity for which the commission was created has a right to be heard with respect to the proposed budget.

(3) The commission shall cause notice of a meeting to be given at least 14 days prior to the date of the meeting. The notice shall set forth the purpose of the meeting, the time and place at which the meeting is to be held and that a copy of the proposed budget is available for public inspection under reasonable circumstances in the office of each county extension agent. The notice shall be given by:

(a) Mailing a copy of the notice to each producer of the commodity for which the commission was created who is known to the commission; or

(b) Publishing a copy of the notice at least once in a newspaper of general circulation in the state and, if such newspaper of general circulation in the state does not also have general circulation in such county, at least once in a newspaper of general circulation in each county in which during the last preceding crop season or year at least five percent of the total production of the commodity unit was produced. [1959 c.596 §25]

**576.430 Final budget; filing; certification by Director of Agriculture.** (1) After the public meeting or meetings upon the proposed budget as provided in ORS 576.425, the commission shall prepare a final budget and adopt it as the budget of the commission for the next succeeding fiscal year. At least one copy of the final budget, together with an affidavit of the commission setting forth the pertinent facts relating to the proceedings under ORS 576.425 and the preparation and adoption of the final budget, shall be filed in the office of the commission, and shall be available for public inspection under reasonable circumstances.

(2) The commission shall send a copy of the final budget and of the affidavit to the director. The director and board shall jointly examine the final budget and the affidavit and, if it is determined that the form of the final budget is in accordance with law and estimated expenditures are in conformity with statutory requirements and that the facts set forth in the affidavit indicate that ORS 576.425 was complied with and that the final budget was prepared and adopted in accordance with law, shall certify such determinations on the copy of the final budget. If the director determines that the final budget fails to meet these requirements in any respect, the director shall immediately notify the commission of the particular failures and the commission, as soon as possible, shall take such steps as are possible and necessary to remedy the defects. The certified copy of the final budget shall be retained by the director and shall be available for public inspection under reasonable circumstances. [1959 c.596 §26; 1977 c.198 §13; 1993 c.98 §19]

**576.435 Form and contents of budget.**

(1) The final budget prepared by the commission under ORS 576.415 (2) and the proposed and final budgets prepared by the commission under ORS 576.425 and 576.430 shall show the estimated receipts and expenditures by or under the authority of the commission under ORS 576.051 to 576.584 for the fiscal year for which the budget is adopted. The proposed budget prepared by the commission under ORS 576.425 shall also show the actual receipts and expenditures by or under the authority of the commission for the fiscal year preceding the fiscal year in which the proposed budget is prepared, if any, and the estimated receipts and expenditures by or under the authority of the commission for the fiscal year in which the proposed budget is prepared, if any.

(2) Estimated receipts and expenditures for the fiscal year for which the budget is adopted shall be fully itemized in the proposed and final budgets and shall be prepared and arranged to show in plain and succinct language each particular item of such receipts and expenditures. Such items of receipts and expenditures shall be arranged under major groups or categories as nearly as practicable the same as the most recent classifications of revenue and expenditures established under ORS 291.002 (6) and 291.206.

(3) The proposed and final budgets shall contain one estimate only for the fiscal year for which the budget is adopted for emergency or other expenditures unforeseen at the time the budget is prepared. [1959 c.596 §27]

**576.440 Limitation on expenditures.** (1) Except as otherwise provided in subsection (2) of this section, no expenditures of moneys for a fiscal year may be made or incurred by or under the authority of the commission under ORS 576.051 to 576.584:

(a) In excess of the total amount of expenditures estimated for the fiscal year in the budget adopted for the fiscal year or, with respect to any major group or category of estimated expenditures, in excess of the total amount of expenditures estimated for the major group or category for the fiscal year in the budget adopted for the fiscal year.

(b) With respect to any major group or category of estimated expenditures, for any purpose different than that indicated by the major group or category for the fiscal year in the budget adopted for the fiscal year.

(2) No expenditures of moneys for a fiscal year unforeseen at the time the budget is prepared may be made or incurred by or under the authority of the commission under ORS 576.051 to 576.584 in excess of the

amount of expenditures estimated as provided in ORS 576.435 (3). [1959 c.596 §28]

**576.445 Unforeseen expenditures.** (1) Subject to ORS 576.440 (2), expenditures of moneys for a fiscal year unforeseen at the time the budget is prepared may be made or incurred by or under the authority of the commission under ORS 576.051 to 576.584 by an order of the commission. The order shall indicate the amount of the expenditure, the purpose thereof and the facts constituting the unforeseen nature thereof. At least one copy of the order shall be filed in the office of the commission, and shall be available for public inspection under reasonable circumstances.

(2) The commission shall send a copy of the order to the director. The director shall examine the order and the budget to which it relates and, if the director determines that the form of the order is in accordance with law, that the facts set forth in the order and the budget to which it relates indicate that the order is in accordance with law, and that the proposed unforeseen expenditure is appropriate to accomplish the goals and needs of the commission, shall certify such determinations on the copy of the order. If the director and board determine because of a failure to comply with ORS 576.425 or because the final budget, its preparation or adoption, is defective or estimated expenditures are not in conformity with statutory requirements, the commission shall immediately be notified. The commission, as soon as possible, shall take such steps as are possible and necessary to remedy the defects. The certified copy of the order shall be retained by the director and shall be available for public inspection under reasonable circumstances. [1959 c.596 §29; 1977 c.198 §14; 1993 c.98 §20]

**576.450 Exemptions from application of ORS 576.415 to 576.445.** ORS 576.415 (2) and 576.420 to 576.445 do not apply to:

(1) Moneys returned to petitioners by the commission under ORS 576.065 (4).

(2) Moneys reasonably necessary to pay the organizational expenses of a newly created commission.

(3) Moneys reasonably necessary to pay expenses in connection with the assessment, levy and collection of the first assessment under ORS 576.325 by a newly created commission.

(4) Moneys reasonably necessary to pay expenses in connection with the preparation and adoption of the first budget of a newly created commission. [1959 c.596 §30]

**576.505 Referendum on continuance of commission.** After five years from the date any commission was created, a referendum

may be held at the petition of the producers of the commodity or at the request of the commission upon the question of the discontinuance of the commission. The question shall be submitted by ballots upon which the words "For discontinuance of the \_\_\_\_\_ (here insert the name of the commodity) commission" and "Against discontinuance of the \_\_\_\_\_ (here insert the name of the commodity) commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of the discontinuance of such commission shall be held within five years from the date the result of the previous referendum was declared. [1953 c.489 §31; 1957 c.447 §21; 1959 c.596 §77]

**576.515** [1953 c.489 §32; repealed by 1959 c.596 §90]

**576.525 Winding up commission's affairs if vote is in favor of discontinuance.** If the vote at the referendum provided in ORS 576.505 is in favor of discontinuation, the commission shall as rapidly as possible terminate its activities, convert its assets into cash and do all other things necessary to terminate its activities. At the termination of such activities, any funds remaining in possession of the commission shall be paid to Oregon State University for research regarding the commodity for which the commission was created. [1953 c.489 §33]

**576.555 Referendum to limit or expand commission's powers or for election or appointment of commissioners.** (1) A referendum may be held once annually for any one or more of the following purposes:

(a) Increasing or decreasing the maximum permissible assessment under ORS 576.325, which in no case shall exceed 10 percent.

(b) Limiting or expanding the powers and duties of the commission; but no powers and duties shall be granted to or imposed upon the commission which are not permitted under ORS 576.051 to 576.584.

(c) Changing any matter which was provided for in the petition under ORS 576.055 (2)(a), (b) or (d), or which was provided for by a prior referendum; but such change shall be within the limits permitted under ORS 576.051 to 576.584.

(d) Providing for the election, and the election, of commissioners instead of their appointment by the director, or providing for the appointment of commissioners by the director instead of their election by referendum.

(2) A referendum on any proposition referred to in subsection (1) of this section may

be held at the same time as a referendum provided for in ORS 576.505. [1959 c.596 §78; 1965 c.515 §7; 1977 c.198 §15]

**576.565 Department to conduct referendum; procedure.** (1) A referendum provided for in ORS 576.505 or 576.555 shall be conducted by the department upon its receiving either of the following:

(a) A petition signed by 20 percent of the producers of the commodity or 200 producers of the commodity, whichever is less. The petitioners shall pay the cost of such referendum in the same manner as provided in ORS 576.065, except that the commission shall not return to the petitioners any of such cost.

(b) A written request from the commission. The commission shall pay the cost of such referendum.

(2) The referendum shall be held, notice thereof given, expenses thereof paid and the result thereof determined, declared and recorded in as nearly as possible the same manner as provided for a referendum upon the proposition of the creation of a commission. No hearing shall be held and no determination of need shall be made by the department prior to the referendum. The department shall adjust the wording on the ballots so that the voters may clearly know and cast their vote upon the question or questions submitted. [1959 c.596 §79]

**576.570 Termination of office of commissioners elected prior to referendum.**

(1) If at any time a referendum is held pursuant to ORS 576.555 on the question of providing for the election of commissioners or for the appointment of commissioners, and the vote is favorable to such change, the terms of office of those commissioners holding office immediately prior to the date of taking office of the commissioners elected or appointed as a result of such referendum shall cease.

(2) If the vote on such referendum is favorable on the question of providing for the appointment of commissioners, the director shall appoint such commissioners within 30 days of the date of the referendum as provided in ORS 576.205 and 576.235. [1965 c.515 §6; 1977 c.198 §16]

**576.575 Withdrawal of petition or request for referendum.** (1) At any time after a petition or written request is filed with the department under ORS 576.565 and before the date set for the referendum by the department, a written request may be filed with the department by the petitioners with respect to a petition filed under ORS 576.565 (1)(a), or by the commission with respect to a written request filed under ORS 576.565 (1)(b), asking that the petition or written re-

quest be withdrawn and that the department take no further action or proceedings with respect to the referendum.

(2) The written request shall be signed by more than two-thirds of the persons whose signatures appear on the petition, or by a person authorized by the commission, as the case may be.

(3) Upon receiving the written request, the department shall take no further action or proceedings with respect to the referendum. Amounts paid to the department to cover the costs of the referendum and remaining unexpended shall be returned to the petitioners or the commission, as the case may be, by the department.

(4) If a petition or written request is withdrawn and the department takes no further action or proceedings with respect to the referendum, subsequent petitions or written requests relating to the same referendum proposition may be filed and action and proceedings taken thereon. [1959 c.596 §80]

## REGIONAL COMMISSIONS

**576.578 "Regional commission" defined.** As used in ORS 576.580 and 576.582, "regional commission" means an apple commission or an onion commission, including a western Oregon onion commission, whose functions are to be performed only within a specified area of this state. Any such area shall consist of one or more entire counties. [1971 c.486 §2; 1987 c.180 §1; 1993 c.281 §1]

**576.580 Regional commission formation; duties and powers.** In addition to those commissions presently existing, there may be formed a regional commission for apples or onions. Except as provided in ORS 576.582:

(1) Any such regional commission shall be established, administered and dissolved in the manner provided in ORS 576.051 to 576.584.

(2) Any such regional commission shall have all the same rights, duties, powers, privileges and immunities as are conferred upon any other commission by ORS 576.051 to 576.584. [1971 c.486 §3; 1987 c.180 §2; 1993 c.281 §2]

**576.582 Establishment; administration and dissolution of regional commissions.** In establishing, administering and dissolving a regional commission:

(1) The petition referred to in ORS 576.055 shall contain a list or description of those counties in which the regional commission is to function.

(2) The notices and hearings referred to in ORS 576.075 need only be given and held

in those counties in which the regional commission is to function.

(3) Determinations regarding the requirement for a hearing referred to in ORS 576.078 shall be based upon the number of producers and the quantity of apples or onions produced in those counties in which the regional commission is to function.

(4) Subsequent petitions relating to the same regional commission may not be filed nor action taken thereon within one year from the date the department makes a determination denying the need for the regional commission pursuant to ORS 576.085.

(5) The ballots referred to in ORS 576.095 and 576.505 shall contain a listing or description of the counties in which the regional commission functions or is to function, and only those producers within such counties shall be eligible to vote.

(6) Determinations regarding the number of producers and filings by the department referred to in ORS 576.115 shall be limited to those counties in which the regional commission is to function.

(7) Determinations regarding the number of producers referred to in ORS 576.125 shall be limited to those counties in which the regional commission is to function. If the referendum does not result in the creation of the regional commission, subsequent petitions relating to the same regional commission may not be filed nor action taken thereon within one year from the date of the filing referred to in ORS 576.125.

(8) The power to assess, levy and collect an assessment referred to in ORS 576.325 is limited to that amount of apples or onions produced in those counties in which the regional commission functions.

(9) At the budget hearing referred to in ORS 576.425, only those producers in those counties in which the regional commission functions may be heard. The notice required to be given by ORS 576.425 need only be given in those counties in which the regional commission functions.

(10) The referendum referred to in ORS 576.555 may also be for the purpose of increasing or decreasing by one or more entire counties the area in which the regional commission functions.

(11) Determinations regarding the number of producers referred to in ORS 576.565 shall be limited to those counties in which the regional commission functions. [1971 c.486 §4; 1993 c.281 §3]

**576.584 Rulemaking authority.** The department may promulgate rules to carry out the provisions of ORS 576.578 to 576.584. [1971 c.486 §5]

**576.585 Rules for "handling," "processing" and "casual sales."** (1) After public hearing and as provided in ORS 183.310 to 183.550, the commission shall consider, and may:

(a) Further define and prescribe rules for "handling," "processing" and "casual sales."

(b) Establish quantities of the commodity, or a type of sale thereof, or a type of producer subject thereto, which may be exempted from assessment.

(2) In carrying out the provisions of this section, the commission shall take into consideration:

(a) The laws and rules of the Federal Government and other states relating to commodity commissions, boards and marketing orders.

(b) The practices, procedures and customs peculiar to the production, handling, processing and trading of its particular commodity and the producers or growers subject thereto.

(c) The cost of collecting the particular assessment and the practical problems relating thereto.

(3) In order for an application for exemption to be considered, or to be maintained, as set forth in subsection (1) of this section, a producer shall furnish periodic reports and information as may be deemed necessary by the commission to substantiate the exemptions which may be prescribed thereunder. [1965 c.211 §2]

**576.595 Sales are in commercial channels.** Notwithstanding other laws to the contrary, any sale of a commodity by a grower or producer is, for the purposes of ORS 576.051 to 576.991, deemed to be a sale in commercial channels. [1965 c.211 §1]

### MEDIATION OF MARKETING DISPUTES.

**576.610 Definitions for ORS 576.610 to 576.650.** As used in ORS 576.610 to 576.650, unless the context requires otherwise:

(1) "Agricultural commodity" means any agricultural, horticultural or viticultural product, but does not include milk, timber or timber products.

(2) "Department" means the State Department of Agriculture.

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

(4) "Handler" means any person who purchases an agricultural commodity and thereafter grades, packs, cans, freezes, distills, crushes or otherwise preserves or changes the form of the commodity for the purpose of marketing the commodity.

(5) "Producer" means a person engaged in the business of growing, raising or otherwise producing an agricultural commodity for sale or an association of such persons organized under ORS chapter 62.

(6) "Representative group of producers" means those producers who produced, in the previous crop season, more than 59 percent of the amount of the commodity handled by each separate handler with whom such producers are involved in a dispute. [1969 c.238 §1]

**576.620 Department to perform mediation services; employees; qualifications.** In addition to such other duties as may be prescribed by law, the department shall perform mediation services for producers and handlers involved in agricultural marketing disputes in the manner provided in ORS 576.610 to 576.650. Subject to any applicable provision of the State Personnel Relations Law, the director may appoint such employees as the director considers necessary to perform the mediation services required by ORS 576.610 to 576.650. In addition to or in place of any permanent employees appointed to perform mediation services, the director may appoint persons, on a temporary basis, to perform such services. Such temporary employees serve at the pleasure of the director, and need not be members of the classified service, as defined in ORS 240.210. The director may set the hours, salaries, expense allowances and other terms and conditions of employment of such temporary employees. Any person designated to act for the director in a mediation proceeding shall be a disinterested person who is not a producer or handler of the commodity involved in the dispute, or interested in the ownership or management of such a producer or handler. [1969 c.238 §2]

**576.630 Request by producers for mediation; meeting with parties.** Whenever a representative group of producers of an agricultural commodity are unable to reach an agreement on price or other marketing term with a handler, either side may request in writing mediation assistance from the department in settling the dispute. Not later than 10 days after receiving such a request for assistance, the department shall meet with the parties to the dispute and shall assist the parties in attempting to reach a settlement. [1969 c.238 §3]

**576.640 Rules.** In accordance with ORS 183.310 to 183.550, the department may promulgate rules to carry out ORS 576.610 to 576.650. [1969 c.238 §4]

**576.650 Cooperation by state agencies.** All governmental agencies and officers shall cooperate with the department and furnish such information and advice as the depart-

ment considers necessary for the performance of its mediation services. [1969 c.238 §5]

### PAYMENT FOR AGRICULTURAL COMMODITIES

**576.700 Definitions for ORS 576.700 to 576.710.** As used in ORS 576.700 to 576.710:

(1) "Commodity" has the meaning for that term provided in ORS 576.051.

(2) "Processor" means any person who purchases, offers to purchase or contracts to purchase in this state any commodity from a producer or an agent of a producer for the purpose of packaging, processing or marketing such commodity. "Processor" does not include any cooperative, formed pursuant to ORS chapter 62.

(3) "Producer" means any person other than a processor who produces a commodity in this state for commercial purposes.

(4) "Meat animal" has the meaning for that term provided in ORS 603.010. [1971 c.531 §1; 1975 c.703 §8]

**576.705 Processors required to pay for commodities within 30 days after delivery; interest on late payments.** Notwithstanding any other provision of law:

(1) In the absence of a contract providing otherwise, any processor who purchases a commodity from a producer shall make full payment therefor not later than the 30th day after the day the processor takes delivery of the harvested commodity.

(2) Any processor who fails to make payment as required by subsection (1) of this section shall pay, in addition to the amount due, interest thereon at the rate of one percent per month. [1971 c.531 §2]

**576.710 Applicability of ORS 576.705.** ORS 576.705 does not apply to any processor:

(1) Who purchases from a producer seed that requires cleaning and germination tests; or

(2) Of sugar beets whose contract with a producer for sale of the crop provides for profit sharing; or

(3) Of fish or seafood products; or

(4) Of meat animals. [1971 c.531 §3; 1975 c.703 §9]

### WINE ADVISORY BOARD; WINE CELLAR

**576.750 Definitions for ORS 576.750 to 576.765.** As used in ORS 576.750 to 576.765, unless the context requires otherwise:

(1) "Board" means the Wine Advisory Board.

(2) "Grape product" means any juice, must, concentrate or extract made from

vinifera grapes, true or hybrid, whether or not partially fermented. It does not include alcoholic liquor as defined in ORS 471.005.

(3) "Wine" means any wine containing not more than 21 percent alcohol by volume and produced in all respects in conformity with the laws of the United States and the regulations of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

(4) "Wine growing" means the cultivation in commercial quantities of vinifera grapes in this state.

(5) "Wine making" means the ownership and control of or the management of a licensed winery in this state. [1977 c.690 §1; 1983 c.651 §1]

**576.755 Wine Advisory Board; functions.** There is established a Wine Advisory Board in the State Department of Agriculture for the purpose of encouraging and promoting enological and viticultural research and experimentation to develop maximum yields and quality from Oregon lands suitable to the production of wines, and to promote the marketing of wines and wine grapes produced in Oregon. [1977 c.690 §2; 1983 c.651 §2; 1987 c.804 §2]

**576.760 Board membership, terms and qualifications.** (1) The Wine Advisory Board shall consist of 11 members appointed by the Director of Agriculture for terms of four years, each to continue in office until a successor is appointed and qualified. In making appointments, the director shall take into consideration any nominations or recommendations made by table wine industry organizations. The appointments shall be made so that each major wine growing area of the state is represented. At least nine of the 11 members shall be commercially involved in the operation of a vineyard or a winery licensed in this state, at least three of these nine members shall be commercial wine producers and at least three of these nine members shall be wine grape producers without commercial winery interests at the time of appointment. At least one member shall be a wine maker of fruit or berry wines.

(2) Each member of the board shall have the following qualifications which shall continue during the term of office:

(a) Each shall be a bona fide resident of the state.

(b) Each shall have demonstrated through membership in an industry organization, public service or otherwise an active interest in the development of the Oregon table wine industry.

(3) Upon expiration of the term of a member of the board, the successor shall be

appointed for a term of four years, except in case of a vacancy, when the appointee shall serve the unexpired term of the member to be replaced. [1977 c.690 §3; 1983 c.651 §3; 1987 c.804 §4]

**576.763 State wine cellar; sources; uses.** The board shall establish a state wine cellar by purchasing or receiving donations of wines made in this state from fruit or grapes grown in this state. Wines collected in the state wine cellar may be:

(1) Held as standards to compare against other wines to develop and improve Oregon viticultural and enological practices.

(2) Sold to state governmental agencies for service at official governmental entertainment functions.

(3) Sold to the Governor and to the administrative heads of state agencies on official government business to present as gifts when required by protocol or social custom.

(4) Displayed and offered for tasting in connection with promotional campaigns to encourage the purchase of Oregon wines. [1985 c.117 §2]

**576.765 Wine Advisory Board Account; use of funds.** (1) There is established in the General Fund of the State Treasury a Wine Advisory Board Account. Funds collected pursuant to ORS 473.030 and 473.045 shall be credited to such account and shall be continuously appropriated exclusively for the expenses of the Wine Advisory Board. In any fiscal year the board shall budget, from funds other than fees collected by the Wine Advisory Board, at least one-third of its funds towards research and development and at least one-third towards promotion and marketing including administrative costs associated with either category.

(2) All funds collected pursuant to ORS 473.030 (4) shall be credited to the account and are appropriated continuously to the Wine Advisory Board for the payment of expenses of any duty, function or power imposed by law upon the board. [1977 c.690 §6; 1983 c.651 §5; 1987 c.804 §3]

**PENALTIES**

576.990 [Repealed by 1953 c.119 §2]

**576.991 Penalties.** (1) Violation of the provisions of ORS 576.024 is punishable, upon conviction, by a fine of not exceeding \$250.

(2) Violation of any provision of ORS 576.051 to 576.584 is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment in the county jail for not more than 90 days, or both.

(3) District and justice courts shall have concurrent jurisdiction with circuit courts in all prosecutions under ORS 576.051 to

576.584. [1953 c.489 §38; subsection (1) enacted as 1955 c.572 §6; subsection (4) of 1957 Replacement Part enacted as 1957 c.447 §19; subsection (5) of 1957 Replacement Part enacted as 1957 c.447 §17; 1959 c.596 §81; subsection (2) enacted as 1967 c.388 §3; 1983 c.740 §224]

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