Testimony by the Oregon Department of Agriculture
Regarding House Bill 3811
Establishment of Price Negotiations for Perennial Ryegrass

April 25, 2001

Before the Senate Committee on Natural Resources, Agriculture, Salmon & Water

Background:
This bill is the result of negotiations and a court settlement between the Perennial Ryegrass Bargaining Association and grass seed dealers. The bill expands on existing authority of the department to assist in price negotiations between producers and purchasers of agricultural commodities. (See ORS 576.620 -- Department to perform mediation services -- In addition to such other duties as may be prescribed by law, the State Department of Agriculture shall perform mediation services for producers and handlers involved in agricultural marketing disputes in the manner provided in ORS 576.610 to 576.650.)

Purpose of the Legislation:
HB 3811 would establish a process to enable a cooperative group of growers and a representative group of commodity buyers to participate in price negotiations. The legislation would provide antitrust immunity for dealers to collectively enter into price discussions. This is called "state action immunity."

The department has worked closely with the parties and the Attorney General's office in the reviewing the initial draft of the bill to ensure that the requirements of federal law are met to enable more than one purchaser of like product into price negotiations at the same time. Without the process provided in this bill, such price negotiations would constitute illegal price fixing.

<u>Attorney General Comment on Original Draft:</u>
The department was advised by the Attorney General's office that the original bill draft does not adequately provide the authority for the department to properly supervise the process. Consequently, amendments were developed for the Committee's consideration. The parties have approved of these amendments.

<u>Requisite Legislative Authority and Role of Oregon Department of Agriculture:</u>
The role of the department is quite specific and the process must be clearly followed to ensure antitrust immunity for the parties, and the legislation has to meet two clear doctrines established by federal law and Supreme Court decisions.

First, the statute providing the immunity must clearly identify the anticompetitive activity that will be permitted -- in this case, price setting -- and that this action is intended to displace competition.

Secondly, the process must be "actively supervised" by a state agency which has the express authority and responsibility to review the process and activities of the parties.

Active supervision includes:
1) The exercise of independent judgment and control so that the review and approval of prices is more than "stamping" the agreement of the parties;
2) Supervising and guiding discussions to prevent antitrust violations;
3) Receiving and reviewing minutes of all meetings;
4) Approving or disapproving of prices to assure they meet the interests of the state (such as maintaining a healthy grass seed industry, local economy, a balanced marketplace, etc.) and not solely the interests of the parties (e.g., prices set too high);
5) Stipulating cease and desist orders to the parties on any actions ODA deems not in compliance with the interest of the state and proper negotiations; and,
6) Evaluating complaints from affected third parties who may challenge the anticompetitive conduct.

The department anticipates intensive involvement with the parties over a short duration during price discussions. Consultation with the Attorney General on implementation and development of rules will be necessary. The department will collect fees from the parties to pay for the costs of supervising the negotiations.

<u>Adoption of Rules:</u>

The bill has an emergency clause and requires the department to adopt rules. Due to the interest of parties in implementing the process this season, ODA would need to adopt emergency rules. The parties to the process would work with ODA in the development of these rules.