

House Committee on Agriculture and Natural Resources  
Testimony by the Oregon Department of Agriculture  
Regarding House Bill 3461  
April 25, 2005

Background:

Under federal law known as the Capper-Volstead Act, growers are allowed to join together in legal entities as farmer cooperatives, bargaining associations or other formations that allow them to pool their production and negotiate collectively over prices to sell their products, make joint purchases of seed or other inputs, and conduct other transactions. This law gives producers assurance that if they organize in compliance with a few constraints and conduct their joint marketing activities in a responsible manner, they will not be considered as being engaged in an illegal restraint of trade.

Even though growers have the ability to conduct activities in cooperative arrangements, a grower organization cannot meet with more than one purchaser of their commodities at a time. If two or more dealers meet together to discuss prices with growers, this would be considered price collusion on the part of buyers.

The mechanism to enable such a transaction – that is, bringing together farmer cooperatives or bargaining associations with multiple buyers to negotiate over prices of a single commodity – is called State Action Immunity. This process is supervised by a state agency from start to finish and provides antitrust immunity for dealers to collectively enter into price discussions with growers.

HB 3811, passed in the 2001 Legislative Session, created this process for perennial ryegrass and has now been functioning for four years with oversight by the State Department of Agriculture. ODA worked closely with the Attorney General's office on the original legislation to ensure it met all state and federal requirements to protect the parties in this process.

Utilization of the process and participation in the process if voluntary. The department provides oversight authority as provided by the statute when requested by the growers and the dealers.

ODA believes the process used for negotiating prices of perennial ryegrass have been successful. The bill before you would simply add annual ryegrass and tall fescue to the existing legislation and make the process available to those segments of the seed industry if they choose to do so.

#### Requisite Legislative Authority and Role of Oregon Department of Agriculture:

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;
- 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.

This process creates a unique opportunity for growers and dealers in Oregon's agriculture commodity markets to have broad discussions about all market factors involved, and to negotiate prices that reflect these influences.