



OREGON
ASSOCIATION OF
NURSERIES

**Jeff Stone, Executive Director, Oregon Association of Nurseries
Testimony on House Bill 4002A (Agricultural Overtime)
Joint Committee on Farm Worker Overtime
February 24, 2022**

Co-Chairs Sen. Taylor and Rep. Holvey, members of the Joint Committee on Farm Worker Overtime, I am Jeff Stone and I serve as the Executive Director of the Oregon Association of Nurseries. OAN is opposed to House Bill 4002A, and we believe the legislature has not provided enough time for consideration or negotiation to find a true compromise. We urge the legislature to let HB 4002 die for this session, and allow the Bureau of Labor and Industries to take up this issue in the interim.

The current proposal was written by urban Democrats on the false promises on overtime pay. It's a callous attempt to use tax credits as a mediating device that nobody asked for. The proposed tax credit is half-baked at best and does not come close to replacing the costs that this bill will impose on growers. No amount of lipstick will make that pig look good. Does the committee want strip malls and corporate farms? If that answer is yes – you have your bill in House Bill 4002A. The committee has a choice to support family farms and the choice is to vote against HB 4002A.

The Economic Footprint of the Nursery and Greenhouse Industry

The nursery and greenhouse industry is the state's largest agricultural sector, and the industry ranks third in the nation, with over \$1.19 billion in sales annually to customers in Oregon, the rest of the United States, and abroad. For the record, sales do not equate with profit, and never have. Oregon agriculture succeeds in spite of this state being one of the most expensive to do business in the country. We compete nationally and globally, and prices are set by the market — they don't go up when our production costs do.

In fact, nearly 75% of the nursery stock grown in our state leaves our borders, with over half reaching markets east of the Mississippi River. Oregon's elite growers send ecologically friendly green products out of the state and bring traded sector dollars back to Oregon. Nursery association members represent wholesale plant growers, Christmas tree growers, retailers, greenhouse operators and the entire supply chain to get product to

market. Our members are located throughout the state, with our largest nursery growing operations found in Clackamas, Marion, Washington, Yamhill and Multnomah counties.

Decades of collaboration thrown away for a political agenda

When the agricultural overtime bill was first introduced only a year ago, the OAN's conversation with PCUN was that the bill should begin a conversation, as the association has done over the past decade in jointly supporting driver's licenses (twice); in-state tuition for undocumented students; vigorous opposition to the removal of "sanctuary state" status at the ballot box; and most recently, funding for front line workers over the past year due to the myriad of natural disasters that harmed farmer and farmworker alike. Notwithstanding this overt commitment and support to the agricultural cornerstone — the agricultural worker — the proponents of the bill wish to seek a costly political win at the expense of those who they purportedly support.

The issue: [House Bill 4002A](#) would require Oregon's farms to pay overtime wages when 40 hours are exceeded in a work week.

What it does: House Bill 4002 would end Oregon's agricultural exemption for overtime pay requirements — an exemption provided in federal law and observed by most other states. The bill would require farmers to pay time and a half for hours worked above 40 in a standard seven-day work week. A majority of Oregon's farms will NOT be able to afford the increased payroll costs. Ag employees will see their hours and take-home pay reduced. Nobody wins.

OAN's stance: We oppose HB 4002A.

A public hearing that left growers in the lobby

I found it particularly appalling that at the public hearing in the House Business and Labor Committee, groups with no business other than desire to contribute to a union-led political powerplay activated their voices on HB 4002. It's like if the nursery industry weighed in on the top issue of the Oregon Education Association with the audacity to believe that we were experts on their issues.

More than 75 farmers people signed up to testify against HB 4002. Not one paid lobbyist testified against the bill. 100% of those who appeared in the four-hour hearing were farmers, ranchers, and farm and ranch employees. They all told different personal stories, but all said the same thing: A 40-hour threshold for ag overtime with no seasonal exemption is completely unworkable for every single part of the ag community, including employees. On the yes side were 15 or so paid lobbyists, most having nothing to do with agriculture, and a small handful of farm employees. These employees correctly stated that ag work is hard and that they would like to earn more money.

Several of our OAN growers waited to testify as the so-called "Fair Shot coalition" ate up the clock. The callous push by AFSME, AFL-CIO, Family Forward, OLCV, Oregon Food Bank, Planned Parenthood, Rogue Climate, SEIU, Oregon Nurses Association,

Urban League of Portland among others is nothing short of the all-or-nothing culture that is more dogmatic than pragmatic.

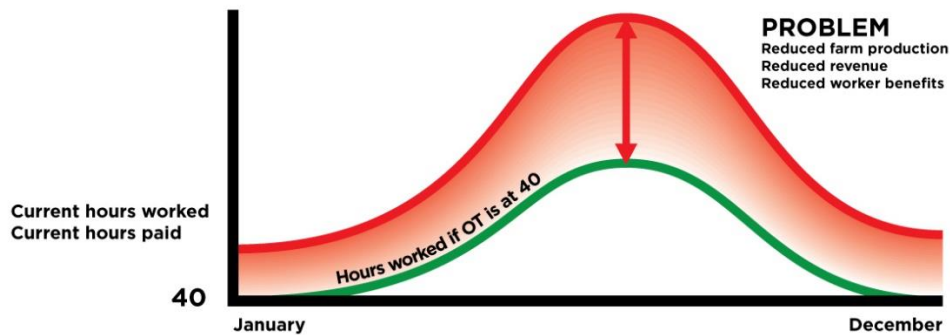
Proponent and Opponent are talking past each other

Over the past couple of years, the agricultural community has done our level best to educate well-meaning yet hyperpartisan interests on the many factors of the agricultural economy. Simply stated — ag is different. Our coalition of agricultural organizations has moved its position for miles, from “hell no” to supporting an overtime threshold. We do recognize that growers need to be part of the solution and seek fair pay for a fair day’s work.

This effort was greeted with unsubstantiated horror stories of forced labor, unhealthy conditions and sub-minimum wage pay. We were accused of outright abuse. We have a simple question: where is this done? We want to know. It is certainly not widespread in today’s ag sector. It is disingenuous to imply it is. It is merely a talking point that harkens back to the “bad old days,” and stokes the emotions of racism.

Impact of a 40-hour Overtime Threshold on Oregon Farm Viability and Farmworker Income

So what is the problem from agriculture’s perspective? See the chart below:



Our coalition of agricultural organizations has released an economic report by Highland Economics LLC (“Economics of Agricultural Overtime Pay in Oregon: Potential Effects on Farms and Farmworkers”) to assess the potential impact of the proposed changes to overtime requirements on Oregon agriculture. The results of the Highland Economics report indicate negative effects on Oregon’s farm production and farmworkers’ incomes.

Oregon Agriculture

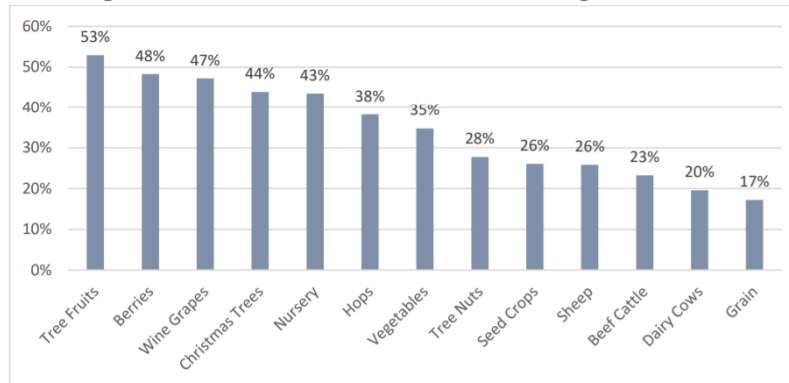
- The total market value of Oregon agriculture is valued at over \$5 billion.

- Approximately two-thirds of this is from crop production, and one-third is from livestock, poultry, and animal production (including dairy).
- Total Oregon GDP linked to the ag industry is \$23 billion.
- Approximately 5.7% of Oregon’s workforce is employed on a farm or ranch.
- More than 8% of Oregon employment is linked to agriculture.

Potential Impacts of Overtime to Farms and Ranches

- **Labor costs represent a large part of operating costs for growers.** Nearly 70% of the economic value of crop production in Oregon is from specialty crops, which rely on farm labor more than other types of crop production. Other top agricultural commodities include cattle and calves and milk production, and compared to other farm types, dairy farms nationally had the next-highest expenses for hired farm labor. **Because of the share of labor-intensive specialty crops grown in Oregon, as well as the size of our dairy sector, Oregon agriculture is more labor-intensive than other states’ typical agricultural production.**

Figure ES-1: Labor as a % Of Cash Costs for Oregon Producers



Source: Highland Economics survey of Oregon farm operators conducted for this study.

- **Farm costs have increased significantly over the last 10 years, but farm income hasn’t kept pace.**
 - A majority of Oregon’s farmers and ranchers have faced significant challenges over the last 18 months that resulted in the loss of farm income. The challenges our farmers and ranchers have faced include drought and severe weather conditions, market access (affected by trade relations and the COVID-19 pandemic), shortages of skilled agricultural labor, agricultural land use and conversion of Oregon farmland, and the challenges of farm succession, as farm operators age.
 - **Nationwide, the prices of ag inputs and farm labor costs are rising faster than the prices received for farm products.**
 - In the last 10 years, prices received by farmers have increased by approximately 9%, while prices paid by farmers for feed, seeds, fertilizer, chemicals, machinery, services, rent, and other things have increased by 16%, cutting into farm profit margins.

- Labor wage rates have increased the most in the last 10 years, going up by 41.5% nationally. Oregon farm labor costs follow that trend.
- **Farms will generally not be able to pass on much, or in some sectors any, increased costs to customers.** Many agricultural commodities are traded on national and global markets where producers are price takers, not price setters.
- Facing changes to agricultural overtime, as well as increasing costs of production and challenges over the last 18 months, farm employers may seek to maintain the viability of their operations by controlling labor costs:
 - **Employers will attempt to reduce hours qualifying for overtime pay to the extent possible** through mechanization, crop switching, and switching to piece-rate pay, instead of hourly pay, to increase productivity with fewer hours.
 - **Employers will try to hire additional laborers to reduce overtime pay.**
 - **Employers may try to reduce standard wage rates** to at least partially offset increased compensation from overtime pay.
 - **Consolidation of farms may occur, due to farms reducing the size of their operations, or even ceasing farming altogether.**
 - **Increased costs and decreased profits may lead to the increased urbanization and irreversible loss of farmlands.**

Potential Impacts of Overtime to Farmworkers

- **The majority of Oregon farmworkers are paid at a rate well above the state minimum wage.**
 - Data from the Farm Labor Survey for Oregon and Washington indicate that average hourly wage rates across all hired farmworkers in 2021 were between \$16.87 and \$17.44 per hour.
 - The survey of Oregon producers conducted found a similar but slightly higher average pay rate for agricultural workers of approximately \$18 per hour.
 - 1.5 times this RRP is \$27, which is not economically feasible for many family farms.
 - Pay of 1.5 times the regional minimum wage rate is already received by many farmworkers.
- **The seasonality of farm work translates to lower overall annual income for many farmworkers.** According to the NAWS survey for the Northwest region of the U.S., the average farmworker was employed for 35 weeks (67% of the year).
- **To date, data from California suggests that farms are reducing worker hours in as a response to agricultural overtime pay.** California's experience indicates that the overtime law is contributing to changes in the industry that were underway prior to the law's implementation: farm consolidation, a switch from high-labor to low-labor crops, increased mechanization, increased use of farm labor contractors and H-2A guest workers and reduced agricultural production.
 - In a 2020 survey of California farmworkers, more than half of the surveyed workers reported that their hours had changed because of the overtime requirement, and 40% said they felt more pressured at work after the overtime law passed.

- **All data sources suggest that farmers will use a variety of means to reduce worker hours and minimize overtime wages.** The impacts will be varied. Some farmworkers will see their compensation rise; the data suggest these will be the more skilled workers or higher paid equipment operators. Some will see compensation stay the same with fewer hours worked, but potentially higher pressure for high productivity on the hours worked. Some will see their compensation fall or their jobs eliminated through increased mechanization/automation.
- **If hours were reduced as much as expected by farmers, the majority of workers would face a pay decline of 3% - 16%.**

Why the current proposal is nothing more than a smoke screen

The association would like to thank members of the legislature who have been attempting to find a way to make agricultural overtime work. The idea of tax credits may ease guilty consciences and be appealing for that reason, but it does not respond to any of the concerns raised by the nursery sector. From the beginning, agriculture has asked for flexibility in the threshold, not state subsidies. Harvest flexibility and a higher overtime trigger (50 hours) would still make Oregon the eighth state to impose an agricultural overtime mandate. In both California and Washington, workers are fleeing to other states because these states didn't adopt ag overtime and can still offer the hours the workers want. These other states actually listened to farmers and found a win-win. Not in Oregon.

The current proposal from the legislature outlines a series of reports on the economic impact of the bill. On its face, it is the responsibility of the legislature to ensure that decisions that could cause harm are acknowledged and corrected. Studies or no, agriculture will bear the cost of mandate, and the economic data will only tell the tale of the state's failure to find a compromise in House Bill 4002A. Ag cannot afford for the state to look in the rear-view mirror when the windshield of present-day economic challenges is before us.

Tax Credit for the OT payments: The amendment states that proposed tax credits are refundable, capped at \$55M for each calendar year. There's language directing future legislatures to adjust the tax credit based on reports. **OAN Position:** No other part of the debate over ag overtime has been more presumptuous by the majority as the notion of tax credits.

- First of all, no major agricultural sector even remotely asked for state funding; we asked for flexibility of a harvest period instead.
- Second, we believe the cost impact of this bill on the agriculture sector is undervalued by at least \$100 million.
- Third, the tax credit is not at all durable. At the first sign of fiscal distress, this tax credit will be cut.
- Fourth, it simply does not work with agricultural cash flow.
- Lastly, with respect, this legislature cannot speak for, or obligate, a future legislature.

The phase in for 40 hours only delays the inevitable — in 3, 5 or 7 years, family farms and workers will pay the price.

The bottom line on the tax credit – This is just a budget trick and a false promise to farmers. Given the recent political and policy dynamics in Oregon and budget volatility, there isn't a single legislator who can guarantee that in a recession, a future legislature wouldn't roll it back for other budget priorities. The more nuanced component is that the highest rate for the tax credit coincides with the highest threshold for overtime hours. So as the overtime thresholds ratchet down, the amount of available tax credits also ratchets down. Less is available in the future when it's needed more, and the utilization increases so it's cheaper to the state for the first few years, but the tax credit costs the state more down the road.

The Oregon Way

The OAN has been steadfast in our commitment to find middle ground. To help secure the long-term survival of operations in the state and incorporate an overtime policy that fits the 225 commodities our great state has within its borders. As the executive director of the association, my primary focus on the structure of any overtime policy is the following:

1. The overtime threshold needs to acknowledge the total compensation package for farmworkers. The 1938 standard only considered wages as the payment to its workforce. In 2022, ag operations think in terms of total compensation to the worker of all levels. This includes insurance, paid time off, revenue sharing, and in some cases, housing.
2. The policy needs a harvest window for peak seasons. The nursery and greenhouse industry employs workers year-round, but not all agricultural sectors operate in that way. It is critical that any policy embrace the unique seasonality of getting product to market. 15 non-consecutive weeks with a 60-hour overtime trigger is common ground. This does not place the state in the position of dictating when a peak season is occurring and sets a maximum number of weeks, which would need to be justified depending on the circumstances of markets, weather and other variable situations. This policy is elegant because it does not pit one sector against another in a labor constrained environment.
3. Cattle and dairy should receive an outright exemption to the overtime rules.

HB 4002 will harm the environment and deepen the divide between Oregon's urban and rural communities

It is contradictory to expect working lands to sequester carbon, while simultaneously making it more expensive to maintain working lands. I served on the Climate Protection Plan rulemaking committee, where the state embarked on a path that was more regulatory than would have been my preference. Had the CPP included incentives for working lands to be part of the solution — predominantly through carbon sequestration and growing green goods that offset greenhouse gas emissions — then the balance between urban and rural considerations would have been achieved. On land use, Oregon's land use system is

nothing more than a series of tradeoffs: denser urban areas that concentrate housing, transportation infrastructure and planning, alongside the continuation of farm practices that are being encroached on every year. Oregon has sought balance and for the most part, Oregon's land use system has worked. Cities can grow and growers can farm.

However, tilting the economic circumstances against the family farm will have impacts on both the climate and land use. Farmers will be forced to reconcile what the legislature, to date, has been blind to – consequences if a price taker commodity is outpriced in the market. Our shade tree growers, for example, sequester carbon. They make an exciting and long-lived contribution to the battle against carbon emissions. However, my members largely compete on a national scale. They will find themselves asking, “Can we sell this \$24 tree when Tennessee is closer to our Eastern markets, has lower costs in terms of labor and transportation, and lures a retail operation to buy their \$15 tree?”

Ag operations cannot move. They are bound to the land, and they feel a deep kinship with it. However, if the legislature prices them out of being competitive, growers will have few options. They can change to less labor-intensive crops, sell to a corporate farm or sell out to a developer who has been eying the land for decades. The choice is yours. Which path do you wish agriculture to take?

The Family Farm is Becoming a Thing of the Past

A century ago, there were more than 6 million farmers in the United States; today, fewer than 750,000 remain. Yet U.S. agricultural output has increased fourfold since then. Farming has the same set of resources and more capital, but fewer owners. This is an instructive way of understanding the economic conditions that have prevailed in many rural communities. Oregon agricultural operators are not people with luxury penthouses, and fancy downtown offices. They're not giant corporate farms that can locate anywhere if the price is right. They are, however, real people, who work the ground, and employ a community of craftsmen and craftswomen to grow some of the best food in the world, the best nursery stock in the country, and other top-notch products.

But on the ground at the local level, farmers hold substantial economic power and are disproportionately responsible for the political constitution of rural areas. It's no coincidence that the trend toward consolidation tracks a sustained stretch of economic stagnation in the rural United States. I have read recently that 40 years ago, just over 20% of new businesses came from outside metro areas. By the 2010s, that number had declined to 12%. According to one recent study, 97% of net job growth between 2001 and 2016 went to cities. We must be careful that urban notions of what an economy should be and how it is structured can have a profound impact on the agricultural community.

The Majority's hypocrisy is in full bloom

Yesterday I sent the committee an op-ed inked by the state's leading agricultural organizations. Make no mistake about it, your consideration of this issue will impact family farms on a granular level. If you will not give us more time to broker a compromise, then you should have seriously considered the -A10 amendments from Reps. Boshart Davis and Bonham. This package not only helps protect family farms, but the very workers they employ. **Instead, and I am still wrapping my head around this, the democrats just voted to not fund farmworkers** through a proven third party. The legislature's stature is diminished by the hypocrisy of this vote. My members were right. The fix was in and the committee ignored the experts in agriculture in favor of the unions.

You Have a Choice to Do the Right Thing

Is sending agricultural overtime to the Bureau of Labor and Industries a preferred path? Only if it is the only venue in which the economic fate of Oregon's farms will be considered. In fact, we have been in dozens of meetings with both sides of the aisle to urge a compromise. Would we prefer a legislative solution that is positive for farmers and farmworkers? Without question, yes. Would the OAN urge you to defer the issue to BOLI if the choice is the current bill or take our chances with rulemaking? Yes, because there we can have a shot of actually being listened to.

You have a choice. We urge you to make the right decision – oppose HB 4002A.

