



Testimony of Friends of Family Farmers
Ivan Maluski, Policy Director
Senate Committee on Business and Transportation
April 15, 2013

Re: SB 845 (Exempting Certain Land Use Decisions from Appeal)
Oppose

Dear Chair Beyer, Vice Chair Starr, and Committee Members:

Thank you for the opportunity to testify on SB 845. I speak on behalf of Friends of Family Farmers, an advocacy group for family-scale farmers and ranchers in Oregon. Friends of Family Farmers opposes this bill because it could cause significant erosion of the state's land use system and would set a precedent for denying the public's right to meaningfully participate in state land use decisions.

First, **several critical terms in the proposed bill are undefined in statute or rule.** The statute applies to all land inside a metropolitan service district which is planned and zoned for use as "large-site industrial development." However, **the term "large-site industrial development" is undefined.** It is clear that the term includes all "traded-sector" industries, however, this term is too broad for the needs described in the bill. "Traded-sector," as defined by ORS 285A.010 includes all "industries in which member firms sell their goods or services into markets for which national or international competition exists." This includes call centers, financial centers, and other industry sectors that do not have specific siting needs requiring a large footprint in areas on an urban fringe. This opens the door to the unnecessary designation of vulnerable farm and forest land for a use that would be more efficiently met within an existing, thoroughly vetted UGB.

Additionally, **there are no criteria for proposed "agreements" between an industry, the Governor, and DLCD.** It is uncertain how the applicant and government should prove that this industrial need cannot be met within an existing UGB, how the footprint of the project is to be estimated and sited, what mitigation must be done, and exactly what positive outcomes must result from any proposed project and when.

It is assumed that the agreement criteria includes a "significant number of full-time jobs", however, the bill does not define this term. The bill does go on to state that, after an agreement entered by the Governor and DLCD, the large-site industrial development may be protected permanently from appeals of land use decisions if it is "*projected* to employ at least 500" (emphasis added). However, the bill does not require any amount of *actual* jobs to be created or retained; SB 845 requires no verification of the industry's job projection, nor does it provide a tracking mechanism for actual on-site employment, nor meaningful consequences if the project creates or sustains fewer jobs than projected over time.

Secondly, in addition to failing to provide meaningful, concise definitions or tracking mechanisms, **the bill precludes the public indefinitely from offering meaningful public input in these decisions.** First, SB 845 tolls any existing appeals of such land use decisions, mooting existing suits and the concerns of farmers and residents who would be harmed by existing proposals.

In addition, SB 845 would protect from appeal "until on or after Dec. 15, 2015" any land use decisions that have caused land "to be planned and zoned for large-site industrial development," including decisions to

bring land into an urban reserve or include it in a UGB. First, the statute does not say whom is to be immunized, so immunization appears to extend to the State, DLCDC, metropolitan service district, county, municipality, and industry - i.e. all entities from which the public could possibly seek recourse. Secondly, selecting a date was unnecessary. Logically, protecting a decision from appeal "until on or after" any certain date protects that decision in perpetuity.

In the event that the prior clause does not protect all such land use decisions indefinitely, these decisions are additionally immunized from appeal upon "commencement of the construction of facilities." However, the term "commencement of construction" is not defined; this means that any evidence of minimal, preliminary effort towards construction on a particular site could be legally sufficient to immunize the construction, the governmental agreement, and the resultant zoning change from appeal. The effect of these three clauses: tolling, immunization on or after Dec. 15, 2015 and immunization after construction, effectively preclude any appeal of these decisions, traditionally developed through public process.

The only remaining remedy for such governmental decisions is illusory. The bill would permit a suit for breach of the agreement between the Governor, DLCDC, and the industry, which would ostensibly extinguish the ban on appeal. However, since the bill does not indicate the criteria for an "agreement," the courts have insufficient guidance to determine what could constitute breach. It is unclear how any plaintiff could prevail in meeting the standard of breach of an agreement in order to remove the ban on appeal.

The bill's stated purpose is to provide greater certainty and predictability to the land use decisions, currently made via a thorough public process. However **the mechanism it chooses, in effect, reduces the predictability of the land use system** by allowing the Governor and DLCDC to make unilateral, case-by-case decisions without any set criteria. While SB 845 may provide certainty to a hypothetical industry, it does so at the expense of the certainty of all established stakeholders in the vicinity of the project, and all Oregonians with a vested interest in the predictability and process of our state's land use system.

Beyond harming the interests of Oregon residents, **SB 845 is counterproductive to the goal of attracting new business to the State.** Oregon's land use system safeguards urban residents' proximity to nature and local food, making Oregon attractive to out-of-state industry and the workers it employs. Rezoning and expanding UGBs without public process or clear standards threatens rural areas with development, thereby jeopardizing the very quality of life that draws potential employers to our state and to the Metro area in particular.

A broader, systematic concern is presented in the structure of this bill; if governmental decisions can be effectively immunized from public input and redress both retrospectively and prospectively, this puts not only the entire land use system in jeopardy, but **raises the question of which other state laws could be statutorily abrogated at an agency's or the Governor's discretion.** For example, could the legislature elect to protect the government from appeals for granting variances from environmental, prevailing wage, or OSHA laws to large-scale industry?

For the sake of Oregon's land use system, farmers near UGBs who rely on this system to protect their livelihoods, and meaningful public participation in government, we urge you to vote no on SB 845.