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# OREGONIANS FOR FOOD & SHELTER

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A non-profit coalition to promote the efficient production of quality food and fiber while protecting human health, personal property and the environment, through the integrated, responsible use of pest management products, soil nutrients and biotechnology.

From the Desk of  
 Senator  
 Bill Hansell

2 October 2013

## Please Support SB 863

We are writing you today to ask for your support for SB 863. This bill is about making sure that ALL farmers in Oregon operate on a level playing field, regardless of what county they live in. It is a simple piece of legislation that ensures that the regulation of agricultural seed and seed products occur only at the state and federal levels—not in local jurisdictions. SB 863 does contain an exemption to the law which would allow Jackson County to move forward with a vote in May on an initiative that has already qualified for the ballot but would offer immediate protection in the remaining 35 counties.

Farmers decide what type of seed to plant in any given year based on a wide variety of considerations. Markets, soil types, crop rotations, expected weather—all of these affect planting decisions. Whether their county or city has banned certain crops should not be something farmers need to consider.

The regulation of agricultural seed is a complex subject and it is important to have people with the proper expertise making science based regulatory decisions. Counties and cities simply don't have the technical or financial resources to properly evaluate agricultural seed regulation, or enforce such ordinances. In contrast, the Oregon Department of Agriculture has plant scientists with the proper expertise to determine what regulations are needed on agricultural seed.

Local regulations on agricultural seed would create a significant burden on farmers, especially those who farm on land that crosses jurisdictional boundaries. It is very common for farmers to have land in multiple counties or cities, and oftentimes a single field can straddle county boundaries. Adding a restriction in one county that is not in place in a neighboring county, creates confusion for growers, and can greatly restrict their ability to plant the crop of their choosing. While some opponents have stated that SB 863 would affect a variety of local laws already in place, the attached Legislative Counsel email addresses that concern.

**SB 863 is not about whether or not agricultural seed should be regulated—it's about where that regulation takes place. Organic, conventional, GE, identity preserved—all of these types of agriculture have a place in this state. Let's make sure all farmers in Oregon get to play by the same rules. Please support SB 863.**

Sincerely,

Scott Dahlman  
 Executive Director

Paulette Pyle  
 Grass Roots Director

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**OFS BOARD MEMBER EMERITUS**  
 Jerry Butler

**From:** Taylor Charles D  
**Sent:** Wednesday, May 01, 2013 9:35 AM  
**To:** Sen Ferrioli; Elzinga Stephen  
**Cc:** Johnson Dexter  
**Subject:** Senate Bill 633A impact on Hood River and Jackson County Ordinances

Good morning. You have asked us to review local ordinances from Hood River and Jackson Counties to determine whether the ordinances would be pre-empted under Senate Bill 633-A. We believe that the ordinances would not be preempted under the bill.

Senate Bill 633-A provides in relevant part that "a local government may not enact or enforce a local law or measure, including ...control area.. to inhibit or prevent the production or use of ... nursery seed ... or ...products of ... nursery seed... ". For purposes of Senate Bill 633-A, "nursery seed" means a propagant of "nursery stock" as defined in ORS 571.005. We will assume for purposes of this message that the diseased trees addressed in both ordinances qualify as nursery seed. We will also assume that the ordinances do not reflect appointments of county horticultural inspectors under ORS 570.010. We note though that if the State Department of Agriculture were to make such an appointment of county horticultural inspectors, it would be a state action that is not preempted by Senate Bill 633A.

The relevant question regarding both ordinances is whether the ordinances are for the purpose of preventing or inhibiting the production or use of nursery seed. We interpret the words "inhibit or prevent the production or use" to refer to having the primary purpose of inhibiting or preventing production and use of a nursery seed in general. We do not interpret it to prevent a local measure that is enacted for a purpose other than to generally inhibit or restrict the production or use of a particular nursery seed from having an incidental effect on the production or use of nursery seed from a specific individual tree or plant. The Jackson County ordinance states that the intent and purpose of the ordinance is to prevent the build-up and spread of injurious tree pests and to encourage the use of pest control measures. The Hood River ordinance lacks a specific statement of intent and purpose, but is clearly directed to pest control. Neither ordinance seeks to generally inhibit or prevent the production of a particular nursery seed. Instead, by trying to control the spreading of insects and disease the ordinances seek to ensure conditions that will promote the production of nursery seed. Any inhibition or prevention of production or use would be the result of a program's failure in achieving its purpose and would be directed only at infested or infected trees and plants.

The Hood River ordinance requires that susceptible trees and plants be treated with appropriate and adequate pesticides. The county does allow an organic grower the alternative of controlling ground fall fruit. If trees and plants are found to be infested or infested, the county may order the trees and plants removed and the area treated. The primary purpose of the program is to prevent disease and insects from damaging nursery seed. The forced removal of infested or infected trees would arguably prevent production and use from those specific individual trees or plants, but since the effort is directed only at infested or infected trees and is part of a larger control effort we do not believe that it can fairly be characterized as an effort to generally prevent the use of any particular nursery seed. It should be noted too that the ordinance specifically allows for a commercial use of fruit from the infested or infested trees.

The control methods identified in the Jackson County ordinance include biological controls such as releasing natural enemies of pests, cultural controls such as the planting of cover crops or trapping of pests, chemical controls such as pesticides, mechanical controls, genetic controls such as planting disease resistant varieties and other controls recognized by experts such as the State Department of Agriculture or Oregon State University. The removal of infested or infested trees and plants is included as one of the three methods of mechanical control available, but we do not view that as sufficient to make the ordinance an effort to generally prevent the production of any particular nursery seed.