



March 5, 2015

## **Testimony on HB 2674 and HB 2675 House Rural Communities, Land Use and Water Committee**

Chair Clem, members of the Committee:

Friends of Family Farmers is Oregon's largest sustainable agriculture advocacy organization, with over 5000 members and supporters statewide. We work with a wide range of farmers, including organic, conventional and some who grow genetically engineered crops. We served on the state's Task Force on Genetically Engineered (GE) Seeds and Agricultural Products in 2014. We offer the following testimony on HB 2674 and 2675, legislation relating to state management and regulation of genetically engineered crops.

Through the passage of Senate Bill 863 in the 2013 special session, the Legislature found that the regulation of genetically engineered crops is under the 'exclusive regulatory power' of the state. However, there is currently no state regulation for the vast majority of these crops, and the Oregon Department of Agriculture does not believe it can use its existing regulatory authority without further action by the Legislature. This leaves many organic and non-GE conventional farmers at risk of seed supply contamination, market losses, and legal liability related to patent infringement from the lax oversight and inadequate regulation of open-pollinated GE crops in Oregon.

The state's Task Force on genetic engineering, formed after the passage of SB 863 with roughly \$100,000 in funding provide by the Legislature, met throughout 2014. It included a wide range of stakeholders on all sides of these issues. While opinions were diverse and debate sometimes contentious, this group identified a number of 'key policy considerations' to improve the state's approach to GE issues. These included the need to clarify the role of the state in regulating genetically engineered crops, the need to protect Oregon's organic and conventional non-GE markets, and filling in data gaps on the use of genetically engineered crops in Oregon. Both HB 2674 and HB 2675 attempt to address these policy needs.

Additionally, this Task Force noted some key Oregon specific overarching themes with regard to GE issues. First, unlike the Midwest, where a handful of genetically engineered commodity crops dominate agriculture production, Oregon agriculture is highly diversified with the vast majority of crops and agricultural economic output here not related to genetic engineering. Oregon further has well developed and valuable specialty seed, organic and export markets that are highly sensitive to genetic contamination.

Another key theme is that more data on GE use in Oregon are needed. Given Oregon's diversified agriculture sector and general lack of reliance on genetic engineering for our major crops, USDA data collection on use of GE crops in Oregon is largely non-existent. However, key organic and conventional sectors face significant market risk and legal liability from some of the genetically engineered crops that are grown here and that may be in the future. This lack of data

collection is a detriment to being able to develop appropriate management policies and should be rectified by a requirement that licensing and royalty agreements for genetically engineered crops grown in Oregon be provided to the Oregon Department of Agriculture as required in HB 2675.

Because it no longer appears to be available for public viewing on the Governor's website, we have submitted as an attachment to this testimony the final report of the Task Force on Genetically Engineered Seeds and Agricultural Products produced by Oregon Consensus for your review and for the public record.

### **Use of Control Areas for Genetically Engineered Crops**

Better oversight and management of genetically engineered crops should not be difficult for the Oregon Department of Agriculture, and could easily be funded through a fee system paid for by developers and distributors of genetically engineered seeds. The Legislature has already granted ODA authority to designate 'control areas' under ORS 570.405 'for the eradication or exclusion from such areas of certain plants or their produce....that may be a menace to such areas and generally to horticultural, agricultural or forestry industries.' While the ODA has used this authority to restrict canola in the Willamette Valley and four other seed producing regions, and restrict commercial production of *Arundo donax* giant cane grass to a small area in NE Oregon, it has also used this authority to establish a 'control area' for a genetically engineered herbicide-resistant bentgrass, banning it from the Willamette Valley entirely through administrative rule and regulating its growth through required isolation distances in Central Oregon. This control area exists to prevent the spread of unwanted engineered herbicide resistant traits into the wild and to protect conventional grass seed growers at risk of contamination. From our perspective, through the establishment and ongoing maintenance of its existing bentgrass control area, the state of Oregon has determined that in fact genetically engineered crops can be a menace to agricultural industries and sometimes need to be controlled and regulated. This is particularly the case of open-pollinated crops that can cross with non-GE varieties (for example, alfalfa, canola, sugar beet, corn, and grass seeds like bentgrass and fescue) or those that can cross with wild cousins or go feral (like canola or grass seed).

In fact, the Oregon Department of Justice has advised ODA that its 'control area' authority is actually broad enough to allow for control areas to segregate genetically engineered crops from conventional non-GE counterparts, if the behavior of GE crops in the environment could potentially be a menace to and harm non-GE agricultural industries. We have included as an additional attachment to this testimony a 4-page 2001 memo from the Oregon Department of Justice to the ODA regarding 'Authority to Use Control Areas Under ORS 570.405 to set up Districts to Separate Conventional and Bioengineered Crops' which spells out the state's clear authority to do so.

Because of this, and the ODA's lack of willingness to use this authority without further legislative clarity, the Legislature should take action and direct ODA to use their existing control area authorities to establish rules that separate, isolate or otherwise restrict the growth of open-pollinated genetically engineered crops that can cross with wild plants or damage organic and conventional non-GE seed supplies and other crops. We support requirements in these bills that would direct ODA to take action to establish control areas and other designations by 2016.

But rules for where genetically engineered crops can or can't be grown, or which require minimum isolation distances and other best practices, must be underpinned with good data. Because of this, we support efforts to require that suppliers, distributors and patentholders of genetically engineered seed to tell the Oregon Department of Agriculture how much GE seed is being sold in Oregon, what varieties are being grown, and where it is being grown. Specific farm-by-farm information could be protected from public disclosure, while also requiring ODA to inform nearby farms within a pollination radius to help facilitate grower communication and coordination, and requiring ODA to aggregate the data on a county-by-county and crop-by-crop basis and make this information available at least annually to the public and the Legislature.

Additionally, if the Legislature or ODA is unwilling to regulate GE crops under the control area authority or other designations, it should consider requiring that GE seed companies selling seeds in Oregon employ a technological fix to prevent their pollen from crossing into other farmers' fields and causing them harm or creating legal liability for potential patent infringement. This technology is called cytoplasmic male sterility (CMS), and if linked with the genetically engineered traits, it would prevent those unwanted traits from wandering across property lines and harming non-target plants as the genetically engineered pollen would be sterile. With such a requirement, the need for control areas and other designations would likely go away, and co-existence would be facilitated by seed development companies taking ultimate responsibility for ensuring their product does not harm farmers and industries that choose not to use their seeds.

As noted previously, Oregon agriculture is largely not dependent on genetic engineering. Most of our biggest crops have no genetically engineered equivalents. We also have important export, seed, and organic markets that need to be free of GE contamination for these industries to grow and succeed, including alfalfa hay, specialty seed, grass seed, and others. The open-pollinated GE crops currently grown in Oregon that pose a risk for contaminating similar non-GE crops are: sugar beet seed, sugar beets, limited amounts of canola for oil and animal feed, some corn, and an unknown amount of alfalfa. We do not grow cotton or soy here, two of the nation's most prominent GE crops. Knowing where these GE crops are grown in Oregon and in what quantities will allow ODA to make informed, science-based decisions about how best to manage these issues.

Thank you for the opportunity to testify on these bills.

Ivan Maluski  
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Attachments:

- 1) Governor's Task Force on Genetically Engineered Seeds and Agricultural Products, Final Report, Oregon Consensus; December 2014
- 2) Oregon Department of Justice memo to the Oregon Department of Justice re: Authority to Use Control Areas Under ORS 570.405 to set up Districts to Separate Conventional and Bioengineered Crops; September, 2001