



TESTIMONY ON HB 3400 -1

JOINT COMMITTEE ON IMPLEMENTING MEASURE 91

MAY 27, 2015

Co-Chairs Lininger and Burdick and Members of the Committee:

Thank you for the opportunity to provide comments on the -1 amendments to HB 3400. As two of Oregon's largest agricultural organizations, the Oregon Farm Bureau (OFB) and Oregon Association of Nurseries (OAN) have a strong interest in ensuring that cannabis cultivation and propagation fit within existing agricultural production laws, so that cannabis is regulated similarly to the over 200 other agricultural commodities produced in Oregon.

With this background in mind, OFB and OAN submit the following comments on the -1 amendments to HB 3400:

Land Use: We recommend the amendments more clearly address the relationship between the prohibition on county regulation (outside of time, place, and manner restrictions) and county land use permitting. It is unclear whether and to what extent counties can grant conditional use permits for processing facilities or other activities conducted on a property, and whether and to what extent they can actually impose conditions on those uses consistent with the Department of Land Conservation and Development's (DLCDD) rules and county ordinances. OFB and OAN recommend clarifying that while local governing bodies cannot enact laws specifically directed at cannabis cultivation or propagation, cannabis growers are subject to existing laws governing agricultural and processing operations, including local land use laws.

Similarly, we recommend removing the predetermination of how processing facilities are permitted under the conditional land use permitting process. Existing agricultural processing facilities will usually be permitted by the counties under one of three conditional use processes:

1. **Farm Processing Facilities.** Oregon law allows a conditional use permit for a facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. See ORS 215.283(1)(r).
2. **Commercial Activities in Conjunction for Farm Use.** Oregon law also allows a conditional user permit for commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(r) of this section. See ORS 215.283(2)(a)
3. **Home Occupations.** Oregon law also allows home occupations in farm zones. Home occupations can be permitted when they are operated by a resident of the home, employ no more than five full or part time employees, are operated substantially in the dwelling or associated buildings, and can't interfere with other uses in the zone. See ORS 215.448.

Oregon does not require a specific type of permit for processing facilities for any other commodity type in Oregon, and OFB and OAN do not believe there is any basis for limiting a counties' ability to permit projects through the two other conditional use processes.

Finally, the -1 amendments should make the primary dwelling section more clear. Our understanding is that the primary dwelling provisions are designed to ensure that the entirety of the property used for cannabis cultivation remains in agricultural production given the small acreage necessary to produce a significant profit on cannabis cultivation. However, as drafted, the amendments suggest that one can never construct a dwelling on a property used for cannabis cultivation. We recommend clarifying the section to clarify that while cannabis production cannot be used as the sole source of income to meet the income requirements necessary to construct a dwelling, producers can construct a dwelling on property used for cannabis production so long as cannabis is not the sole source of income used to meet the necessary income requirements.

Water Permits: OFB and OAN recommend clearly articulating that cannabis producers are subject to state water law. Producers must demonstrate that their water use falls within existing laws prior to issuing a growing license. For uses in areas zoned for farm use, this would require a demonstration of a water rights permit to the extent that the cultivation or processing of cannabis will require water use. For uses in areas connected to a municipal water system, this will require demonstrating that the use of city water for agricultural production is permitted.

Nursery Statutes: Section 111 designates cannabis as nursery stock. This designation suggests that jurisdiction over the propagation of cannabis belongs with the Oregon Department of Agriculture (ODA), given that, under ORS 571.015, "The Legislative Assembly finds and declares that the propagation and raising of nursery stock is an agricultural pursuit that should be regulated and assisted by the State Department of Agriculture." Additionally, we would like to note that ODA's nursery program is funded through licensing fees that pay for the regulation of the industry, including pest and disease issues. The programs these fees fund are critical to maintaining the nationally-recognized high standard of nursery production in Oregon.

OFB and OAN urge the committee to create a distinct statute to regulate cannabis propagation outside of the traditional nursery license. While we agree that cannabis production should operate under similar regulations as other agricultural products, we understand that full assimilation may not occur in the near-term. OFB and OAN ask for statutory language that promotes the seamless integration of cannabis production into the agricultural community over a suitable time frame, regulating cannabis propagation as we do other crops in Oregon. As regulations are established concerning cannabis propagation, it is critical that the ODA have jurisdiction over fertilizer use, pesticide use, and ag water quality.

Please contact Jenny Dresler with the Oregon Farm Bureau or Elizabeth Remley with Oregon Association of Nurseries with any questions.