



February 9, 2016

Testimony in Support of HB 4122
House Committee on Consumer Protection and Government Effectiveness

Chair Fagan, 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 in hopes of finding solutions to long-standing problems with lax oversight over GE crops at the state and federal levels. We are testifying today in support of HB 4122, legislation to allow local communities to enact locally appropriate regulations on genetically engineered crops for the purpose of protecting farmers who grow non-genetically engineered crops. We believe that in the continued absence of a sensible state level approach to regulating these crops, local communities should be able to address issues with GE crops in their communities to protect local farmers who grow non-GE crops, and the positive economic impact non-GE agriculture has in Oregon.

Background

During the first special session of 2013, the Legislature narrowly passed SB 863, which placed genetically engineered seeds and vague and undefined 'products of seed' under the 'exclusive regulatory power' of the state. At the time, we opposed this legislation, as we believe local communities should have the right to establish local policies specific to their local agricultural industries. We also opposed the bill because, based on our experiences, we believed that the Oregon Department of Agriculture (ODA) was not likely to live up to the legislative intent of SB 863. Unfortunately, our concerns have been realized and in the more than two years since SB 863 passed, neither the ODA nor the Legislature has taken any steps to put in place concrete protections sought by farmers who grow non-genetically engineered crops at risk of cross-contamination. While we disagree with the agency's assertion, ODA has stated that it does not believe it can use existing regulatory authority to make science-based decisions to address problematic GE crops. This unreasonable stance from ODA 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.

In February 2014, the Legislature approved \$100,000 to fund the state's Task Force on genetic engineering. Meeting for over a year, the group included a wide range of stakeholders on all sides of these issues. 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.

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. We will further note that regional differences in agriculture in Oregon are substantial, which is why allowing local communities to address locally specific situations, as HB 4122 would do, is critically important.

Another key theme from the state's GE Task Force 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.

Oregon Department of Agriculture's Failure to Regulate at the State Level

The Legislature years ago 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 (because of plant disease issues and not the fact that a large percentage of canola is now engineered for herbicide tolerance), and restrict commercial production of *Arundo donax* giant cane grass to a small area in NE Oregon, it has refused to use this authority to establish similar 'control areas' for federally 'deregulated' genetically engineered crops that pose serious economic risks. Yet, acknowledging this risk, ODA does maintain a control area for one variety of genetically engineered herbicide-resistant bentgrass that has not yet been 'deregulated' by the federal government, 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 issue is similar for other 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) regardless of federal regulatory status.

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 regardless of federal regulatory status, 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.

After Years of State Inaction – It Is Time to Restore Local Control to Protect Farmers

Because of ODA's unwillingness to use its existing authorities to protect farmers most impacted and concerned about contamination from genetically engineered crops, the Legislature should adopt HB 4122 to restore local control to local communities to establish locally appropriate protections for farmers.

We support House Bill 4122 because we believe local communities deserve the right to protect family farmers growing traditional crops from the contamination impacts of genetically engineered crops. While only a small fraction of Oregon's agricultural output is tied to genetically engineered crops, these crops can have significant adverse impacts on farmers growing traditional crops that are not genetically engineered. It is clear that when SB 863 was passed in the 2013 special session to pre-empt local seed laws, there was an intent and commitment made to take action at the state level to protect farmers growing traditional crops. However, no action has been taken, and those most vested in genetically engineered crops have continued to block any meaningful effort to protect farmers growing traditional crops from the impacts of genetically engineered crops.

Pre-empting local communities from adopting local laws based on local growing conditions does not make sense. In the continued absence of state action, local rules are the only way to provide meaningful protections for farmers threatened with contamination from genetically engineered crops. Local governments and local farmers deserve the right to shape locally appropriate protections. As has been shown in Jackson County, such local farmer protections are consistent with Oregon's 'right to farm' law.

Without concrete protections in place, over time farmers in Oregon will lose the ability to raise seeds and crops that are not contaminated by genetically engineered pollen or seed that has crossed their property lines. Regardless of whether one supports genetically engineered crops, it is clear that there is tremendous value in preserving traditional seed stocks. Allowing local communities to create traditional crop seed protection areas not only protects farmers growing traditional crops, it helps to protect the ability of Oregonians to have the option of purchasing locally produced seed and food that is not genetically engineered.

Thank you for the opportunity to testify today. We urge your support for HB 4122.

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Attachments:

- 1) 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