



OREGON
ASSOCIATION OF
NURSERIES

Testimony on House Bill 2358-1
Removal of Agricultural Overtime Exemption
By Jeff Stone, Executive Director, Oregon Association of Nurseries
March 29, 2021

Chair Holvey, Vice-Chairs Bonham and Grayber, members of the committee, I am Jeff Stone and serve as the Executive Director of the Oregon Association of Nurseries. On the industry's behalf I am submitting these comments in opposition to the amended version of House Bill 2358, which would remove the exemption for overtime pay requirements in agriculture.

You have received numerous pieces of testimony since the bill's first public hearing and would commend you to review the perspectives of Leigh Geschwill (F & B Farms), Kyle Fessler (Woodburn Nursery & Azaleas) and Wes Bailey (Smith Gardens) who formally testified before this committee. Please also take into consideration the oral testimony of Elizabeth Remley (Thorn Run Partners) and our previous testimony submitted on March 8, 2021. The OAN remains in opposition of this bill and would encourage a formal workgroup during the interim.

The Economic Footprint of the Nursery and Greenhouse Industry

The nursery and greenhouse industry are the state's largest agricultural sector, and the industry ranks third in the nation, with over \$1.02 billion in sales annually to customers in Oregon, the rest of the United States, and abroad. In fact, nearly 75% of the nursery stock grown in our state leaves our borders – with over half reaching markets east of the Mississippi River. Oregon's elite growers send ecologically friendly green products out of the state and bring traded sector dollars back to Oregon.

Nursery association members represent wholesale plant growers, Christmas tree growers, retailers, greenhouse operators and the entire supply chain to get product to market. Our members are located throughout the state, with our largest nursery growing operations found in Clackamas, Marion, Washington, Yamhill and Multnomah Counties.

Agriculture is not a 9am-5pm Widget Factory

I listened carefully during the prior two hearings and one thing is certain – both employers and farm worker advocates believe the issue of agricultural overtime should be carefully considered to remove as many unintended consequences as possible. This is a big issue for agriculture and the decision by the committee and the legislature will have a

direct impact on the future of agriculture. It is all about what outcome you want for farming. Family owned and operated nursery and greenhouse operations that are community leaders and employers or corporate farms?

Time and again, we heard from proponents that the wage rate by agricultural producers is based on race and racism. This is patently false. This claim impugns the integrity of my members and I deeply resent the implications. In fact, employers work **with** employees – it is a partnership and one that has crafted the highest quality nursery plants in the country. Employees are viewed as extended family – this is heightened by the fact that many nursery employees are year-round workers. There are significant times of the year where additional labor is needed (such as shipping season) and the nursery industry is an attractive employer because of the atmosphere they create to get elite plants to market.

It was downright comical to hear both Oregon State University and the University of Oregon “experts” talk about ag. I would highly doubt that these academics have ever stepped foot on a nursery operation let alone understand the price taking aspect of agricultural economics. It was quite astounding to hear comparisons between a factory setting and agriculture. They are not the same. House Bill 2358 ignores the reality of agriculture. Most jobs in agriculture are not 40-hour-a-week, 52-weeks-a-year type of jobs. Farms operate seasonally, and often during the busy months, the days are long. Plants do not take weekends, and neither do our growers. The nursery and greenhouse industry faces an acute worker shortage, mostly caused by inadequate federal immigration policies. The worker shortage has forced many of OAN’s members to curtail growth because they cannot find enough workers to expand.

It is worth noting that only six states have adopted overtime requirements for agriculture; all other states exempt agriculture from overtime, as allowed by the federal Fair Labor Standards Act. We must think carefully about how we replace the overtime exemption, or we will not have a successful agricultural industry. Agriculture is different: crops can perish overnight; cows must be milked; and untimely weather conditions could mean you do not harvest your crop at all. HB 2358 would adopt one of the most aggressive and broad agricultural overtime laws in the country. The six states that have adopted overtime laws have each taken a vastly different approach than this bill.

Total Compensation Packages

We may be talking about a part of the wage issue in House Bill 2358, but there has been zero consideration of the total compensation packages that farmworkers receive. It costs money to provide not only what the state has mandated, which many nursery operations did before the law was changed. Oregon has some of the best benefits for farm employees in the country: five days of protected sick time, a state minimum wage nearly double the federal minimum wage of \$7.25 (many of these states Oregon nurseries directly compete with for customers), an Oregon-specific worker protection standard, paid family and medical leave that applies to all employees, and a state retirement program tailored to low-wage workers. Oregon also has the highest adverse effect wage for workers under the H-2A visa program and Oregon nurseries average starting (no experience) wage is over \$15 an hour (ODA source).

OAN IS SOLUTION ORIENTED

Workers are the lifeblood of the Nursery and Greenhouse Industry and our growers values its workforce above all else, and OAN's members have worked diligently to ensure that Oregon's nursery and greenhouse workers are afforded the benefits of living in this great state. The OAN has been proud to stand next to the farmworker advocates on critical issues facing both employers and employees. OAN twice was a leading voice in the fight to restore driver license access to all Oregonians, supported in-state tuition for immigrants, campaigned against the ill-conceived sanctuary state designation removal, and this year supported expanded access to EITC. We proudly work alongside our friends in the farmworker community whenever we can to advance equity and justice. These bills needed a strong business voice to pass and become law. We were there. Therefore, it is so profoundly disappointing that PCUN and the other farmworker advocates decided to pursue HB 2358 without any engagement by the agricultural industry.

Please push HB 2358 to an interim workgroup

Oregon's farmers and farmworkers deserve equal chances to write their future, and we would like to do it together. The proponents told us when they introduced this bill that they did not expect it to pass, and they looked forward to working with us in the interim to come up with a viable solution. It will take more than a few weeks to design a successful overtime policy for agriculture. Please give us that time. Understanding how farming operations work is critical and nursery and greenhouse industry members care about their employees and work with them to provide stability, skill development and a total compensation package to support their families.

If you choose to pass this bill this session, you are choosing to corporatize or mechanize the farms of Oregon, and you are choosing to decrease the take-home pay for workers. Give us time to work together to determine what a successful change to the pay structure for farmworkers could look like. Recently I came across a quote in the LA Times from Juan Manuel Moran, a United Farm Workers internal organizing coordinator, who said farms were already struggling with higher worker pay and may not be able to operate with further wage hikes. It sounds good in theory, he added, but in practice it is possible that "the worker ends up losing."

Please vote no on HB 2358 and urge all parties to come together and work out a sensible solution for both employers and employees in Oregon.