



May 23, 2017

## **Testimony in Support of HB 2739, -1 amendment House Committee on Rules**

Chair Williamson, members of the Committee:

Friends of Family Farmers represents small and mid-sized farmers across Oregon. We work with a wide range of producers, 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 of GE crops at the state and federal levels.

We are testifying today in support of HB 2739, to allow farmers who discover unwanted presence of genetically engineered (GE) material on their land to seek compensation from the patent-holders of those GE traits when economic harm has been caused. Despite significant economic risk to many Oregon farmers from poorly regulated GE crops, the state still has no system in place to prevent economic losses when contamination from GE traits occurs. While we believe in the need for better state and local regulation to protect farmers whose crops are at risk of contamination, we also believe the Legislature should strengthen the ability of farmers to hold GE crop patent-holders financially accountable when economic losses have been sustained due to unwanted presence of GE material.

### **Background**

In the special session of 2013, the Legislature passed SB 863. This controversial bill placed genetically engineered seeds and 'products of seed' under the 'exclusive regulatory power' of the state. At the time, we opposed this bill because we believed that the Oregon Department of Agriculture (ODA) was not likely to act to protect farmers who had concerns about GE crops and potential contamination issues.

Unfortunately, our predictions came true. In the more than three years since SB 863 passed, neither the ODA nor the Legislature has taken steps to put in place concrete protections sought by farmers who grow non-GE seeds and crops. The ODA has instead argued that existing regulatory authorities do not allow the agency to make science-based decisions to address problematic GE traits present in pollen and seed that can easily cross property lines. This stance from ODA leaves many organic and non-GE conventional farmers at risk of seed supply contamination, market losses, and even legal liability related to potential 'patent infringement.' Our current approach favors multi-national biotechnology companies that develop and patent GE traits, not Oregon farmers.

One point of information from the Oregon GE Task Force (report available at <https://www.oregon.gov/ODA/shared/Documents/Publications/Administration/GETaskForceReport.pdf>) is that Oregon is not a major GE crop growing state. While some GE crops are grown here, most farmers are not growing them, and we instead have both high value organic and conventional farming sectors that face significant market risk and legal liability from poorly regulated GE crops. These sectors include: specialty vegetable seed (both organic and conventional), cover crop and grass seed, hay and forage, and more.

HB 2739 will provide a new tool for Oregon farmers to protect themselves. It takes a reasonable approach to cases where contamination has occurred: GE traits are easily traceable back to the patent-

holder, farmers must be able to show economic harm from the unwanted presence of GE traits, and the GE trait cannot have been previously grown or permitted to be grown on the land in question.

### **ODA's Failure to Protect Farmers with State Level GE Rules Leaves Farmers At Risk**

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.' Despite advice from the Oregon Department of Justice in 2001 that this authority is broad enough to allow control of GE crops regardless of their federal regulatory status, ODA has generally declined to use the 'control area' authority when it comes to problematic GE crops.

The only ODA 'control area' for a GE crop is for genetically engineered herbicide-resistant creeping bentgrass, a crop that escaped from Idaho test plots into irrigation canals in eastern Oregon and also onto the Crooked River National Grassland from planted fields in central Oregon. Through the bentgrass control area administrative rule, ODA also banned this controversial grass from the Willamette Valley entirely and set strict regulations for its production, requiring minimum isolation distances from conventional crops at risk of cross-pollination 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.

Through the establishment and maintenance of a control area for GE bentgrass, the state of Oregon has determined that genetically engineered crops can in fact be a 'menace' to agricultural industries and thus sometimes need to be controlled and regulated. Federal regulatory status is not the decisive factor - it is the behavior of the crop in the environment. The issues with GE bentgrass are similar for a number of open-pollinated and deregulated GE crops that can cross with non-GE varieties (for example, alfalfa, canola, sugar beet, corn, and grass seed like tall fescue) or those that can cross with wild cousins or go feral (like canola or grass seed).

But despite this, the ODA has taken the position that without further legislative action clarifying their authority, the agency lacks the ability to establish state-level regulations once a GE crop has been 'deregulated' by federal agencies. Based on past positions taken by ODA, despite great economic risk to many Oregon farmers, the future of the GE bentgrass control area may now be in question because it was recently 'deregulated' by the USDA.

The stance of ODA that it cannot create, maintain or enforce state level control areas once federal 'deregulation' of a crop has occurred underscores the need for the Legislature to act. This could include clarifying ODA authority to give them stronger tools to protect farmers, or it could be to end the 2013 pre-emption on local GE crop restrictions. However, HB 2739 offers another way, which is to ensure that GE crop patent-holders are held financial liable when their products cause economic harm to Oregon farmers.

Thank you for the opportunity to testify today. We urge you to pass HB 2739 with the -1 amendment and send it to the House floor with a 'do pass' recommendation.

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