

## Overview of Legal Initiatives in Oregon Supporting Local and Regional Agriculture

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Agriculture has historically been, and continues to be, a significant economic engine in Oregon.<sup>2</sup> Recognizing the importance of agriculture, the state has a history of protecting its agricultural lands and agricultural producers through policy innovation, especially as it began to experience rapid population growth in the 20<sup>th</sup> Century. As such, many of the policies presented in this paper have served as external drivers for the innovative regional food system seen in Oregon today, facilitating entrepreneurship by small and mid-sized agricultural producers as a key driving force in local and regional food systems.

One significant policy innovation took place in the 1960s when Oregon passed legislation designating “Exclusive Farm Use” (EFU) zoning and subsequently established a preferential lower farm use tax assessment for those lands.<sup>3</sup> As urban growth increasingly threatened to convert agricultural lands into subdivisions, Oregon created the state’s land use plan in 1973, in large part to conserve those lands and maintain Oregon’s agricultural output thus demonstrating the State’s dedication to maintaining a robust agricultural sector.

While creating land use regulation to preserve agricultural lands, Oregon also has extensive regulation of agricultural marketing. These policies have generally favored

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<sup>2</sup> See Bruce Sorte and Mallory Rahe, *Oregon Agriculture, Food, and Fiber: An Economic Analysis*, Oregon State University Extension Service (2015), at [http://agsci.oregonstate.edu/sites/agsci.oregonstate.edu/files/oregon\\_agriculture\\_2015.pdf](http://agsci.oregonstate.edu/sites/agsci.oregonstate.edu/files/oregon_agriculture_2015.pdf).

<sup>3</sup> Or. Rev. Stat. § 215.203

larger farms; in other words, most regulations concerning marketing of agricultural products have not been scale neutral, i.e., large-scale production could absorb increased cost of regulation, while inhibiting small-scale agricultural entrepreneurialism. In the past decade, however, several pieces of legislation have been passed to help smaller-scale agriculture producers realize income from their enterprises, especially from local direct sales, to facilitate the growth of regional food production in Oregon through small-scale producers. This paper will discuss several specific policies the State of Oregon has developed to serve Oregon farmers, in particular, its population of small-scale agricultural producers that sell into local and regional markets.

### **Preserving Oregon's Agricultural Lands**

**Senate Bill 100 & 101.** In 1973, responding to the accelerating loss of open space and agricultural lands to development, the Oregon legislature passed Senate Bill 100, formally known as the Oregon Land Conservation and Development Act of 1973. Senate Bill 100 created the Oregon Land Use Plan, delineating 19 Statewide Planning Goals that guide local comprehensive land use planning. Goal 3 specifically focuses on the preservation and maintenance of agricultural lands, and is the first goal listed within the planning guidelines that set aside a type of land for protection.<sup>4</sup> In the same year, the legislature also passed SB 101 that highlighted agricultural lands as a means of conserving natural resources.<sup>5</sup> The prominence of agricultural lands in Oregon land planning goals suggests the importance that the state places on agricultural landscapes.

**House Bill 3239.** Passed during the 2015 Legislative Session, HB 3239 highlights the continued importance that Oregon places on its agricultural lands. The bill is formally known as the Beginning and Expanding Farmer Loan Program, but it is more commonly referred to as "Aggie Bonds." The purpose of Aggie Bonds is to give affordable financial opportunities to beginning farmers in the form of low-interest loans.<sup>6</sup> The program was originally created by the 2013 Legislative Assembly through the adoption of House Bill 2700; however, the bill specified that only a lender that is insured by the Federal Deposit Insurance Corporation would be able to loan funds to a beginning farmer.<sup>7</sup> HB 3239 substantially increased access to the Oregon Aggie Bonds program by expanding the definition of lender, most importantly to include owner-financed sales of land to beginning farmers. The money received through an Aggie Bond can be used for the purchase of agricultural land or financing of new depreciable farm property (e.g., equipment and/or construction of farm buildings).<sup>8</sup> The stated legislative intent of this

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<sup>4</sup> Or. Admin. R. 660-015-0000

<sup>5</sup> Or. Rev. Stat. § 215.243

<sup>6</sup> Or. Rev. Stat. § 285A.425

<sup>7</sup> Or. Rev. Stat. § 285A.422

<sup>8</sup> Business Oregon, *Business Finance Aggie Bond Program* (n.d), at <http://www.oregon4biz.com/assets/docs/AggieBond.pdf>.

program is to support the growing demand for local food in Oregon by expanding the access to capital to acquire land for the incoming generation of new farmers.<sup>9</sup>

**Senate Bill 863 & House Bill 2509.** Also in relation to land use, there has been ongoing controversy regarding the use of GMO crops in Oregon. Two of Oregon’s counties, Jackson County in early 2013 and Josephine County in 2014, passed ballot measures banning the use of GMO crops in their counties. However, during a Special Legislative Session in October 2013, the Legislative Assembly adopted Senate Bill 863, which preempted county regulation of any seed and seed product.<sup>10</sup> Because the Jackson County measure qualified for the ballot prior to the passage of SB 863, the ban was not preempted;<sup>11</sup> however, Josephine County’s measure qualified for the ballot after the adoption of SB 893 and as a result the ban was preempted.

After SB 863, conversation around the use of GMOs in Oregon has shifted to focus on the coexistence of GMO and non-GMO farmers. Part of the coexistence efforts are encompassed in the Oregon Department of Agriculture’s (ODA) mediation program. ODA has a program in place to facilitate mediation between farmers as a lower-cost alternative to the court system;<sup>12</sup> however, prior to the 2015 Legislative Session, this mediation program was completely voluntary. In the 2015 Legislative Session, HB 2509 was adopted by the Legislative Assembly, henceforth making this mediation program compulsory under certain conditions. The intent of this legislation is to facilitate coexistence among farmers employing different practices (e.g., organic and conventional) as well as different types of crops (e.g., GMO and non-GMO).<sup>13</sup> Specifically, this bill requires that if a farmer has “reasonable belief that the planting, growing, or harvesting”<sup>14</sup> of a certain crop on nearby land might interfere or is currently interfering with his or her farming practice, both parties must engage in a mediation process to try to reach a settlement.<sup>15</sup> If one of the parties refuses mediation, then that inaction would be taken into consideration by a court if a lawsuit is initiated by the injured party.<sup>16</sup> This change was adopted to encourage larger producers to go through this lower-cost alternative to the court system. Additionally, in the interest of keeping this avenue as a lower cost

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<sup>9</sup> Or. Rev. Stat. § 285A.420

<sup>10</sup> Or. Rev. Stat. § 633.738

<sup>11</sup> Or. Rev. Stat. § 633.741

<sup>12</sup> Or. Rev. Stat. § 36.252

<sup>13</sup> *Hearing on HB 3367, HB 2456, and HB 2509 A before the Senate Committee on Environment and Natural Resources, 78<sup>th</sup> Leg. Assembly* (2015) at [http://oregon.granicus.com/MediaPlayer.php?clip\\_id=9750](http://oregon.granicus.com/MediaPlayer.php?clip_id=9750).

<sup>14</sup> Or. Rev. Stat. § 36.280 (1)

<sup>15</sup> Or. Rev. Stat. § 36.280

<sup>16</sup> Or. Rev. Stat. § 36.280

alternative to the court system, HB 2509 also specified that the total mediation fees could not exceed \$2,500.<sup>17</sup>

### **Initiatives to Support Entrepreneurial Avenues for Small-Scale & Local Producers**

In order to protect consumers and ensure orderly markets for agricultural products, Oregon has extensive regulation of agricultural marketing. As agricultural operations have become larger over the past decades, concentrating more land into fewer farms and serving export markets, it has become clear that regulatory costs are not scale neutral, i.e., large-scale production could absorb increased cost of regulation, while inhibiting small-scale agricultural entrepreneurialism.

With the recent interest in local and regional food production, usually at a smaller scale and often by beginning farmers and ranchers, the state legislature has created exemptions for small-scale, value-added, direct-marketing and agritourism enterprises that serve local and regional consumers. Beyond reducing regulations, the State of Oregon has passed legislation giving Oregon producers preference in state purchasing. Through designing policies and passing legislation to aid Oregon farmers economically, Oregon is demonstrating the values it holds for producers within the state and for providing access to local agricultural goods and a more regional food system.

### **Entrepreneurial Avenues & Food Safety**

The State of Oregon has sought to balance the need for food safety with the cost of regulating food production. Regulations such as identity and quality standards, sanitation requirements, licenses, inspections, and labeling requirements have commonly been used to ensure food safety. While these regulations have done much to ensure that the food produced and sold in the state of Oregon is safe for consumption, these restrictions have been burdensome for small-scale agricultural producers who seek to add value to their products, which allows them a higher profit margin for those products and preserve products for sales later in the season. Compliance with regulations has been particularly difficult for small food producers, who often do not have the means to comply with regulations while still producing a reasonably priced product.

In response to this problem, the State of Oregon has passed several pieces of legislation to reduce the regulatory load for small value-added agricultural producers. Recently, the State of Oregon has developed bills that reduce the restrictions on how food can be sold, what types of food can be sold, how food can be produced, and to whom food can be sold at a small scale. These bills include the recently passed House Bill 2336 and Senate Bill 320. Both seek to lower regulations for certain producers to increase farm entrepreneurship and local accessibility to agricultural products.

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<sup>17</sup> *Id.*

**House Bill 2336.** Otherwise known as “The Farm Direct Bill,” HB 2336 was passed in 2011 in an effort to ease restrictions for small-scale producers, as defined by gross sales. The bill was designed to lift food processing regulations on dried or cured fruits or vegetables; grains, nuts, eggs and honey; as well as acidified or lacto-fermented foods such as jams, preserves, and pickles, provided that those products are directly grown, processed, and sold by the same producer. Under House Bill 2336, producers of these products are not subject to ORS 585.010 to 585.220 or ORS 616.695 to 616.755 which require licensing, labeling, recordkeeping, inspections, and food handling procedures, so long as the product is sold directly to the consumer and revenue from these products do not exceed \$20,000 a year in gross sales.<sup>18</sup> The law does, however, require a disclaimer on the covered products so that customers know they have not come from a licensed facility.

The lifting of these regulations has multiple goals. The regulations lifted within this bill are generally very time and cost intensive and represent significant barriers to market entry for small farmers selling through direct marketing channels such as farmers markets. Additionally, regulation of small-scale producers did not make fiscal sense. The risk to public health by allowing small-scale farmers to operate without regulation on low-risk food products did not justify the cost of regulating small producers. Lifting regulations seemed to be a logical choice to increase entrepreneurship and reduce government waste.<sup>19</sup>

**House Bill 2872.** Also passed in 2011, HB 2872, more commonly known as the “Poultry Bill” creates a 1,000-bird exemption to the requirement that all poultry must be processed at a state-licensed facility. This exemption applies in two ways: 1) on-farm direct sales and, 2) off-farm direct sales, with the latter having additional regulations.<sup>20</sup> First, under provisions of the bill, poultry producers are permitted to process and sell directly to consumers, on-site, up to 1,000 healthy poultry per year that have been raised from at least 2-weeks of age or younger on the producer’s farm.<sup>21</sup> Under these conditions, the producer does not need a licensed facility for processing, although they are still held to basic sanitary regulations. The producer must have records available to show compliance at the request of an ODA inspector—these records include such things as a sanitation log, a cumulative total of poultry slaughtered, and date of slaughter, among other things.<sup>22</sup> Second, poultry processed under the 1,000-bird exemption can be sold off-site such as

<sup>18</sup> Or. Rev. Stat. § 616.683

<sup>19</sup> See Christy Anderson Brekken, *Can we have our (safe and local) cake and eat it too? Oregon re-crafts food safety regulations for farm direct marketed foods*, 3(2) *Journal of Agriculture, Food Systems, and Community Development* 95 (2013).

<sup>20</sup> Oregon Department of Agriculture (ODA), *Farm Direct Poultry Law Guidance*, Food Safety Program (2014), at

<http://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/FarmDirectPoUltry.pdf>.

<sup>21</sup> Or. Rev. Stat. § 603.038

<sup>22</sup> *Id.*

through CSAs and farmers markets. However, in those instances, the poultry must be processed at a facility that meets the sanitary regulations<sup>23</sup> for poultry processing set by the ODA.<sup>24</sup> Producers utilizing the 1,000-bird exemption for off-site sales are not placed on a routine ODA inspection cycle, but rather are subject to unscheduled inspections where the producer is expected to be in compliance with specified regulations and able to provide all records.

**Senate Bill 320.** Similar to House Bill 2336, Senate Bill 320, adopted in the 2015 Legislative Session, reduced regulations on low-risk home cooked foods, sold direct to consumers on a small scale. Under Senate Bill 320, otherwise known as the “Bakery Bill,” people producing baked goods and candies are allowed to sell those goods directly to consumers without obtaining a domestic or commercial kitchen license provided that revenues do not exceed \$20,000 a year in gross sales.<sup>25</sup> Although the kitchen space does not have to be licensed and inspected, home bakers must pass a food-handler's training course, abide by basic health and safety standards and properly label the products. Internet and indirect sales—such as to restaurants and retailers—are not permitted. Proper product labeling, possession of a food handling certificate, and regular inspections of kitchens are all required by Senate Bill 320, although cottage food operations are not required to maintain a commercial kitchen license.<sup>26</sup> Much like House Bill 2336, the goal of Senate Bill 320 is to increase entrepreneurship by allowing more producers to enter the market and to reduce government waste by cutting unnecessary regulation on small scale producers. Additionally, this bill aids individuals in rural areas with limited access to fresh baked goods (hence, this bill is also known as the “Bakery Bill”).

### **Agritourism**

Also expanding the entrepreneurial abilities of small-scale and regional producers, the State of Oregon has adopted legislation to help support the agritourism industry, which supplements the income of many local and smaller-scale producers. Agritourism is defined as events that invite people to a farm or ranch for some activity or attraction specifically related to the farm operation. Common examples include farm stays, farm stands, u-pick and u-cut farms, community-supported agriculture shares, and wine tasting, among other things.

**Senate Bill 960.** The 2011 Oregon Legislative Assembly took a major step toward making agritourism a viable entrepreneurial avenue for small-scale and local producers with the passage of SB 960. This legislation authorized counties to allow agritourism activities and/or events on exclusive farm use (EFU) land. The term EFU zone was

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<sup>23</sup> See Or. Rev. Stat. § 619.026 and Or. Admin. R. 603-028-0100

<sup>24</sup> ODA, *supra* note 17

<sup>25</sup> Or. Rev. Stat. § 616.723

<sup>26</sup> *Id.*

adopted by the 1961 Oregon Legislative Assembly in an effort to preserve agricultural land solely for farm use. However, this push for preservation greatly limited the ability of farmers to supplement their incomes through agritourism. Thus, SB 960 was needed to expand the entrepreneurial options of producers by allowing them to start certain agritourism business ventures determined by the county.

Importantly, it remains the county's choice as to how much of SB 960 they adopt. In other words, the county may choose to amend its land use planning code in order to adopt all, part, or none of SB 960.<sup>27</sup> As a result, there is currently a wide variation among what agritourism activities and/or events are permitted by county across Oregon. Additionally, this bill, when adopted by a county, specifically permits four types of events: single events and expedited single events as well as a maximum of six three-day events and 18 additional events within one calendar year and all with specific terms for authorization.<sup>28</sup> Further, SB 960 states that events must be “incidental and subordinate to existing farm use on the tract,” which refers to the fact that agritourism events are meant to support the primary operation on the farm—agriculture.<sup>29</sup>

For example, there is a defined percentage of the total farm's income allowed to come from farm stands. Specifically, any fees or incidentals paid for at a farm stand associated with attending a promotional activity for the farm may not exceed 25 percent of the farm stand's total annual sales;<sup>30</sup> therefore, it remains that farm stands must be used primarily for the sale of agricultural goods. However, a formal percentage of the total farm's income is not defined for agritourism activities or events, leaving the “subordinate to existing farm use” a qualitative standard that is open to interpretation by the counties.

**Senate Bill 341.** In 2015, the Oregon Legislative Assembly adopted SB 341, which provides liability protection to producers with agritourism businesses. The law specifies that the producers are not liable for the injury or death of a participant caused by the inherent risk in an agritourism activity, as long as the proper signs with the terminology denoted in the legislation are posted at and around the agritourism activity or attraction site.<sup>31</sup> This was an important step in expanding the ability for small-scale producers to supplement their income through additional entrepreneurial avenues.

### **Expanding Markets for Oregon Products: Farm-to-School**

**House Bill 2800.** In 2011, the Oregon legislature passed HB 2800, otherwise known as the “Farm-to-School Bill.” This bill provided state funding to purchase locally-grown

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<sup>27</sup> Or. Rev. Stat. § 215.213

<sup>28</sup> *Id.*

<sup>29</sup> Or. Rev. Stat. § 215.213(11)(a)(A)

<sup>30</sup> Or. Rev. Stat. § 215.213

<sup>31</sup> Or. Rev. Stat. § 30.673 and 30.677

foods for schools, build school gardens, and develop and conduct nutritional education programs in public schools.<sup>32</sup> This bill functions through State reimbursements of school districts for purchases of Oregon-produced food and the development of a grant program that funds school-based food, agriculture, and nutrition programs.<sup>33</sup> This bill was developed with multiple goals. Increasing the presence of local foods in Oregon school districts was meant to increase the nutritional value of student meals while also providing an incentive for schools to purchase food from local producers. This would, in turn, give an additional economic boost to Oregon farmers and distributors. This program was expanded with the passage of House Bill 2649 in 2013 and House Bill 2721 in 2015.

## **Conclusion**

Oregon has long recognized the importance of agriculture and has acted through policy innovation. Given that the agricultural sector is made up of privately-held land and businesses, policy serves to protect the agricultural land base from market forces that drive development, as well as facilitating entrepreneurial opportunities for all producers who seek to make a living off of the land. As farmers look for alternative sources of income, multifunctional operations that use multiple market channels through entrepreneurial activities such as agritourism, value-added, direct sales and institutional sales have expanded to play a more important role in the future of agriculture and potential improvement of long term farm profitability, food security, and community resilience. Oregon has acted on multiple fronts to preserve agricultural lands, open entrepreneurial marketing channels, and support the small and mid-sized producers that serve local and regional food systems.

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<sup>32</sup> Or. Rev. Stat. § 336.426

<sup>33</sup> Or. Rev. Stat. § 336.431