

# Lawmaker: Oregon farm industry vulnerable in 2015 legislature

## Fuel, tax, labor and environmental policies likely controversies

By MATEUSZ PERKOWSKI  
Capital Press

Oregon's farm industry will be more vulnerable to "bad bills" this year due to larger Democratic majorities in the state legislature, said Sen. Betsy Johnson, D-Scappoose.



Johnson

Proposals that harm agriculture — such as legislation that would raise fuel prices — will be hard to block now that Democrats have gained two seats in the Oregon Senate for an 18-12 majority and one more in the House for a 35-25 majority, she said.

"This is not a session to be passive. Ag and natural resources are under assault," Johnson said at the Dunn Carney law firm's Ag Summit in Wilsonville on Jan. 21.

However, lawmakers may be nervous about approving bills that cause "pain at the pump" for voters and are willing to listen to constituents more than lobbyists, she said.

Growers should pay close attention to proposed bills and inform their local lawmakers on how they affect agriculture, Johnson said. "Be a resource for your legislators."

Gov. John Kitzhaber will probably push aggressively for energy and environmental legislation, such as extending

the state's low carbon fuel standard, which is expected to substantially increase prices, she said.

Attempts to impose new taxes or raise existing ones are also likely, as are proposals for a major hike in the minimum wage, Johnson said.

"I hope we're not rushing iconic bills though without understanding unintended consequences," she said.

Proposals to raise the hourly minimum wage from \$9.25 to \$12 or even \$15 are expected to gain traction, which will probably prompt some businesses to mechanize and cut jobs, said Katie Fast, vice president of public policy for the Oregon Farm Bureau.

A bill to impose mandatory paid sick leave for employees "definitely has legs this session," while other legislation would remove a state pre-emption statute that blocks local governments from setting their own minimum wages, Fast said.

Lawmakers are also expected to propose new regulations for pesticides — particularly aerial spraying — as well as genetically modified crops, said Katy Coba, director of the Oregon Department of Agriculture.

Coexistence among different types of agriculture is gaining more attention among legislators, she said. "We're seeing more and more challenges in this area."

# Expert: Idaho spud industry has too much capacity

By JOHN O'CONNELL  
Capital Press

POCATELLO, Idaho — A former Potato Growers of Idaho executive director believes Idaho's capacity to produce and pack potatoes has outgrown the market, at the expense of growers.

Jim Chapman, now retired in Arizona, spoke on the overcapitalization of Idaho's potato market Jan. 21 during the 47th Annual University of Idaho Potato Conference.

"Overcapitalization is when an industry builds more capacity to produce than there is a marketplace for," Chapman said. "That leads to a glut of supply and economic hard times for those who produce in the industry."

He urges growers to lengthen rotations between potatoes, which decreases supply and improves soil tilth and tuber quality.

As potato profit margins have tightened, Chapman said, Idaho growers have increased acreage and shortened rotations between potatoes to remain profitable. Farming more ground has allowed growers to reduce per-acre equipment expenses and buy inputs in bulk.

"You can keep improving your economic livelihood by expanding, and that's what has happened," Chapman said.



John O'Connell/Capital Press

A truck is loaded with spuds during the 2014 harvest. A former Potato Growers of Idaho executive director believes Idaho's capacity to produce and pack potatoes has outgrown the market, at the expense of growers.

University of Idaho Extension economist Paul Patterson believes the cumulative damage caused by grower expansion outweighs the savings. For every 1 percent increase in the state's spud crop size, Patterson calculates potato prices drop about 7 percent.

Patterson said Eastern Idaho farms that once had cows have specialized in spuds and cut alfalfa from rotations. He said most rotations have shrunk from five crops to three crops.

Ritchey Toevs, an Aberdeen farmer who serves on the board of the Idaho Potato

Commission, said with the advent of the fumigant Vapam, many of Idaho's Upper Valley growers shortened further to two-year rotations, cutting out wheat and fumigating for spuds every other year.

Chapman believes Idaho growers suffered when fresh packing sheds switched from buying potatoes with guaranteed prices to buying on consignment, setting the price later based on the market. Consequently, he said rather than letting demand pull their product, sheds are pushing their spuds through the pipeline.

Chapman believes the state's switch to consignment was solidified in 1993, when fresh sheds sought to avoid price risk during a bad year for hollow heart.

Nowadays, Chapman said, Idaho spud growers usually sell their crop at cost and make their money by having a stake in their fresh shed. On the processing side, Chapman believes PGI lost its influence after 1996, when growers anticipating a big crop signed contracts directly with processors rather than insisting upon a collective agreement.

# Renewed pesticide lawsuit omits 'right to farm' challenge

By MATEUSZ PERKOWSKI  
Capital Press

Rural residents in Oregon's Curry County have revived a lawsuit over pesticide spraying without directly challenging

the state's "right to farm" law. Their case originally sought to overturn Oregon's "right to farm" statute — which shields growers from nuisance and trespass lawsuits over common farm practices — for allegedly infringing on the constitutional right to seek legal remedies for an injury.

The initial complaint was dismissed by Curry County Circuit Court Judge Jesse Margolis, who ruled that the 17 plaintiffs must first claim actual damages before seeking to invalidate the "right to farm" law.

In 2013 the Curry County residents told state regulators that Pacific Air Research sprayed their properties with pesticides, causing serious medical problems.

An investigation by the Oregon Department of Agriculture determined the aerial applicator used 2,4-D and triclopyr on off-target sites and falsified information.

Last year, the residents filed a complaint trying to get the "right to farm" law pre-emptively declared unconstitutional without formally accusing Pacific Air Research of committing nuisance or trespass violations.

The plaintiffs attempted to void the "right to farm" statute before making such claims because they didn't want to be held

liable for the defendants' legal fees, as permitted by the law.

Margolis threw out their original complaint, finding it was merely hypothetical that Pacific Air Research would use the "right to farm" law as a defense and thus he lacked jurisdiction to deem it unconstitutional.

Even so, Margolis allowed the plaintiffs to amend their complaint.

The revised lawsuit includes charges of nuisance, trespass and negligence against Pacific Air Research as well as other logging, forestry and timberland companies allegedly involved in the pesticide operation.

However, the latest version removes any mention of the "right to farm" law, which presumably means the defendants would have to raise that statute as a defense to throw its constitutionality into question.

The plaintiffs are ready to "tackle" that debate if it comes up, though it's unclear whether the subject will be raised, said William Sherlock, their attorney.

Such a defense could be risky, since an unlawful and improper pesticide application would not be protected under the law and invoking the statute would open the defendants to liability for their opponents' litigation expenses.

Bradley Piscadolo, attorney for the defendants, said he has not decided whether to employ the statute.

Regardless of what happens in the case, questions about the law's constitutionality are unlikely to end, experts say.

The farm industry would face such a challenge if a plaintiff crossed the appropriate procedural hurdles, said Tim Bernasek, an agricultural attorney.

"It is an issue for the ag and

forestry community to prepare for," he said.

Two previous challenges to the "right to farm" law were dismissed on procedural grounds in 2008 and 2013 by the Oregon Court of Appeals, which left the underlying constitutional question unanswered.

In 1993, the Oregon Court of Appeals upheld the statute's constitutionality without explaining its legal rationale but the Curry County plaintiffs claim this ruling was superseded by a 2001 Oregon Supreme Court opinion.

An attack on the "right to farm" statute based on the remedy clause of Oregon's constitution "sounds like at least a good theoretical argument," said Paul Diller, a law professor at Willamette University.

The Oregon Supreme Court has been "vigilant" in protecting tort rights that existed when Oregon attained statehood in 1859, he said.

The argument that the "right to farm" law unconstitutionally violates these rights would be a "colorable claim" — meaning the challenge would be allowed to proceed under the right circumstances without being immediately thrown out of court — even if it's not ultimately found valid, Diller said.

Defenders of the "right to farm" statute could claim that the ability to sue over common agricultural practices was not recognized under the original Oregon constitution, he said.

They could also argue the state's land use planning law has already created a system to reduce nuisance and trespass conflicts, Diller said.

"It's designed to minimize them," Diller said. "I think that's a relevant component."

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