



Seed planted for food-related state, federal pre-emption laws

by Carolyn Orr (corr@starband.net)

In spring 2004, voters in the California county of Mendocino banned the growing of genetically modified organisms (GMOs). Shortly after that, several towns in New England passed similar resolutions.

Those local decisions have been followed by a flurry of state-level activity over the past two years.

Worried that a patchwork of local seed regulations could impact farm profitability, legislators in 19 states have introduced bills to prohibit political subdivisions from passing restrictions on the registration, labeling, distribution, sale, use and disposal of seed.

As of April, 14 states had enacted seed and plant pre-emption laws.

The local and state actions raise policy questions not only about the value and/or safety of GMOs, but about the decision-making role that different levels of government should have regarding the nation's food-delivery system.

And at the same time these pre-emption laws make their way through legislatures, states are having their own authority challenged by the federal government. A law being considered in the U.S. Congress would pre-empt state food-labeling laws.

Uniformity vs. local control

In this region, six states have passed seed and pre-emption legislation, with no opposition in some chambers. (The measure passed unanimously in the Kansas House and Senate.)

Last year, South Dakota became the first Midwestern state to approve the bill, which received broad bipartisan support.



Sen. John Koskan

"It makes sense to confine the decisions to the state level, where the conclusions would have greater review and provide a level playing field for everyone in the state," says Sen. John Koskan, a Republican from Wood.

Koskan himself is an organic farmer, choosing not to use genetically modified seeds. But as a state legislator, he was concerned that varying local regulations would complicate producers' planting decisions (if they were farming in two townships with different seed rules, for example).

Iowa, home to two of the world's largest agriculture seed companies, also passed the legislation in 2005.

"Uniformity in the regulation of seed is essential in a leading farm state like Iowa," says Sen. David Johnson, a Republican from Ocheyedan. "Regulation compliance and certification must

be consistent, for the benefit of producers as well as consumers."

In Iowa, as in many Midwestern states, the legislation actually brought seed regulations in line with those already in place for other crop inputs, Johnson says. Pesticides and fertilizers, for example, are regulated at the state level.

Approval process questioned

States only regulate genetically modified seeds after three federal agencies have approved their sale.

The U.S. Department of Agriculture is responsible for ensuring that the seed is safe to grow. The Environmental Protection Agency evaluates any potential environmental impact, and the Food and Drug Administration is charged with making sure the crop is safe for human consumption.

But some people are skeptical of the government's approval process. At the least, they say, local voters and governments should be allowed to decide what types of crops are grown in their communities.

Opponents of the plant and pre-emption laws say states traditionally have set minimum requirements, while allowing local governments to establish higher levels of public health protection.

"This is part of a nationwide effort by agribusiness to take decision-making control away from local communities," says Michigan Sen. Liz Brater, who opposes the proposed legislation in her state. As of April, the measure had been passed in the Senate and moved to the House.

"Local control is historically an important principal that state regulations need to respect," the Ann Arbor Democrat adds.

"In 1998, the Legislature took away the right of local communities to zone out large confined animal feeding facilities. This current legislation is just another step in taking control of decisions away from local communities."

Along with being an intrusion on home rule, she says, the pre-emption law comes at a time

when federal funding for agriculture research is on the decline, resulting in companies doing the research on the safety of GMOs. She believes more independent studies are needed to evaluate longer-term effects on human health and the environment.

But Johnson says states are in a better position than local governments to assess GMO-related safety concerns. State policymakers have more resources to initiate and access science-based research, he believes.

As part of the legislation passed in Iowa, lawmakers established an interim study committee "to review issues regarding the use of genetically modified organisms in agricultural production."

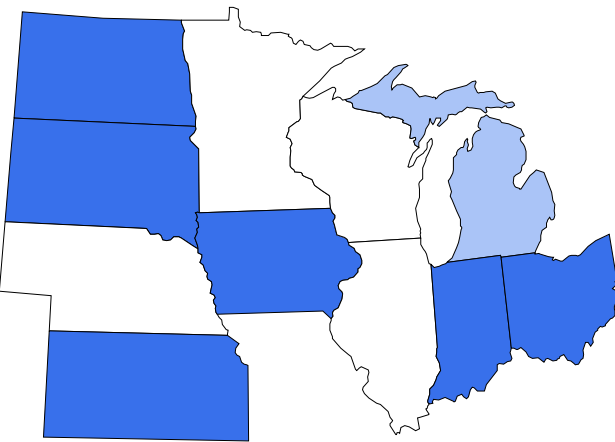
State authority threatened

Pre-emption is not just an issue between state and local governments.



Sen. David Johnson

Seed and plant pre-emption laws in the Midwest *



- State passed pre-emption law in 2005
- As of April, pre-emption law had passed Senate and been moved to House
- State does not have a pre-emption law

* As of April 2006, 14 U.S. states had enacted pre-emption laws.

Sources: Environmental Commons and CSG Midwest staff

A bill passed earlier this year in the U.S. House of Representatives would pre-empt approximately 200 state food-labeling laws. Under the National Uniformity for Food Act, which is now being reviewed in the Senate, states could not add warnings on labels that are different from federal rules.

Attorneys general from 39 states have written a letter to federal lawmakers urging them to reject the proposal.

"Important consumer warnings dealing with mercury in fish, arsenic in drinking water and lead in cans are just a few examples of state food-labeling requirements at stake nationwide," they wrote in the letter.

"Food safety has been largely a matter of state law and oversight for more than a century, with states performing more than 80 percent of food safety work."

While national standards governing food safety might be beneficial, opponents say, the Uniformity for Food Act does not put any in place. It merely reserves the right of the federal government to set such standards, they note, thus forbidding states from adopting their own policies. ★

Dr. Carolyn Orr is an agricultural and rural policy consultant for the CSG Midwestern office.