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TESTIMONY SUBMITTED TO THE JOINT STANDING COMMITTEE ON THE
JUDICIARY

IN OPPOSITION TO LD 1667

Resolve, to Allow Hemphill Farms, Inc., to Sue the State

April 28, 2025

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, my name is Craig Lapine. I am the Bureau Director for ~~the Division of Agriculture, Food, and Rural Resources~~. I am speaking on behalf of the Department of Agriculture, Conservation, and Forestry in opposition to LD 1667, *Resolve, to Allow Hemphill Farms, Inc. to Sue the State*.

In November 2024, our Department was notified of a positive bacterial ring rot (BRR) detection in a seed lot from Hemphill Farms, discovered through testing conducted for Canadian export requirements. While Hemphill Farms has indicated its intent to pursue legal action, specific claims have not been shared with our Department. We understand their concerns may relate to our seed import and field inspection protocols, possibly regarding a 2022 seed lot imported from Montana and subsequent field inspections through 2024.

Background on Bacterial Ring Rot

Bacterial ring rot is a devastating potato disease. North American seed certification programs have a zero-tolerance standard for this pathogen. A single infected tuber can result in the rejection of the entire lot. Managing this disease requires two critical components: planting certified disease-free seed and implementing rigorous sanitation practices. The disease presents unique challenges as infected plants may be asymptomatic while still capable of spreading infectious material.

Department's Role and Actions

Our Department maintains protocols for seed potato imports. For each lot, we require comprehensive health certification documentation and conduct multiple inspections throughout the growing season.

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During 2022-2024, our staff performed the required reviews of health certificates, conducted field inspections, and completed post-harvest evaluations of Hemphill Farms' imported seed lots. We have reports noting we inspected Hemphill Farms' seed fields twice each growing season as our processes require. No evidence of BRR was detected during these inspections, and documentation from origin states showed no disease presence.

Nevertheless, the definition of "Certification" found in the Department's Chapter 252: RULES GOVERNING CERTIFICATION OF SEED POTATOES IN THE STATE OF MAINE is worth noting: "Certification means the act of endorsing that the potatoes have been inspected and, at the time of inspection, met the standards or requirements specified in this Chapter for seed potatoes. Certification does not mean or constitute any warranty that the potatoes are merchantable, disease-free, or fit for a particular purpose."

The integrity of our certification system relies on trust and compliance with established standards across state and international boundaries. This collaborative approach is fundamental to maintaining effective plant health regulations and interstate commerce.

Grower Responsibilities

Seed potato growers share responsibility for disease detection, particularly during seed cutting operations. Best practices include continuous monitoring of cutting tables, which provides an opportunity to inspect every tuber being processed, exponentially more tubers than the samples selected for visual inspection. This critical control point could have revealed any visible BRR symptoms in the seed lots.

While BRR testing is voluntary for in-state distribution in Maine, it is required by Canada and by many states for export purposes. Following the positive BRR detection, our staff immediately engaged with Hemphill Farms to provide guidance on necessary protocols and restrictions.

Sovereign Immunity

Finally, we note that sovereign immunity protection sets a high standard for lawsuits against state departments. The Maine Tort Claims Act allows suits only in specific circumstances, with strict requirements and damage caps. In this case, the Department followed proper protocols and shared disease detection responsibilities with exporting states and growers, making it unlikely to meet the threshold for overcoming sovereign immunity.

The Department remains committed to supporting our agricultural community while maintaining the integrity of our certification programs. We strongly oppose LD 1667 as it would undermine these essential regulatory functions.