



Because Agriculture Matters!

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To: Senate Economic Growth Committee

From: Ed Wengryn, NJFB Research Associate

Re: New Jersey Farm Bureau testimony on S2602

Thank you for the opportunity to testify on S2602, the Farm Worker Epidemic Health and Safety Act. As a critical industry that needs to operate in natural and man-made disasters, the farming community in New Jersey knows how important farm worker health and safety is to the industry and a farm's successful operation.

We agree with the emphasis on elevating the importance of the farm worker community and have no objection to compliance with the New Jersey's Department of Health's Guidance Document for farm workers. We disagree, however, with the heavy enforcement mandate in the legislation. The bill calls for "maximum enforcement" of all related farm inspections during a public health emergency or state of emergency, which we believe is inappropriate and unnecessary.

Each of the agencies outlined in the bill have specific areas related to farms, farm employers and workers, their environment, health, and safety. The bill's language greatly expands the inspectors' role outside of their normal job duties and expertise, and requires each agency's inspectors to know all of the regulations impacting farm operations beyond the farm worker protections needed for this health emergency. They are directed to inspect for and report on all violations or compliance issues. For example, a Department of Labor Wage and Hour auditor would also have to know and report any fire code, housing, environmental, or work-place safety violations. This is overkill enforcement undeserved by farm employers.

Going through the bill:

In Section 4 of the bill ... during a health emergency farm workers are to be amongst the "highest priority" to test for any communicable disease. At the beginning of this pandemic when test kits were limited, this mandate could have put a strain on the state's limited resources. The test all farm employees mandate in the legislation conflicts with the reality of the state and federal government recommendation to test only symptomatic people because there were not enough test kits available. How does this mandate impact a future pandemic with the same testing limitations? While we think any worker who wants to be tested should be tested, we notice medical professional (see Dr. Lew DeEugenio statement on this bill) concerns with the mandate to test all employees and the releasing to the public of this information "to the extent allowable by law." We feel the bill should better protect the workers right to privacy, including the right to refuse testing, ensure no conflicts with HIPAA regulations, and ensure the privacy of the farm as well.

Section 4 also deals with inspections (Subsection B) and the requirement to meet all standards, guidelines, and guidance along with all existing state rules and regulations. This power is even extended to third party providers, something we strongly object to. Currently, the farming community and the NJ Department of Health have been using Federal Qualified Health Centers (FQHC's) to do education and testing. As written, this bill would allow those organizations access to all employee payroll and personnel files, including social security and I-9 documentation. This information access goes well beyond the scope of health care and farm worker education which is the focus of their mission. It also grants them authority to do other inspections on the farm.

We support the use of the Guidance Document as it was designed for this pandemic. We agree with the points outlined in 4, B 1-5 as they are spelled out in the current Guidance Document. However, this legislation sets a road map for agriculture in any future health emergency and these specific steps might not be recommended in a different health emergency. We think it would be better if the legislation just required that in a pandemic or health emergency, any guidance for agriculture must be adhered to by the farming operations.

In Section 4-Subsection C regarding collaboration, we agree with this concept. It was a struggle for the farm industry to get this guidance in a timely manner and the education process is still ongoing for the current pandemic as federal and CDC recommendations change. However, **passage of this legislation would change the collaborative process that the industry has been working successfully with to one of heavy-handed, penalty driven enforcement.** It also has the potential for after-the-fact penalties for actions taken before a farm knew the guidance would become law. This heavy-handed approach is also reflected in the bill's section on violations. The bill seems to create a standard where both state and federal enforcement could create a double penalty situation, as the United States Department of Labor (USDOL) requires all state laws to be followed when they enforce penalties.

Finally, under the "Emergency Health Powers Act" the NJ Commissioner of Health has the authority to mandate any recommendations and guidance to ensure the protection of public health in an emergency. Ongoing efforts by the state's farm operators to comply with the guidance have helped control the spread of the virus. The results of the ongoing testing by the NJ Department of Health also demonstrate the avoidance of a severe outbreak within the farm worker community. We feel the power to add enforcement or mandates to the guidance requirements should remain with the NJ Health Commissioner. If this bill simply mandated that farms follow the guidance, we would be supportive of efforts to accomplish that goal.

Thank you for your consideration.

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