



Senator Tipping  
Representative Roeder  
Members of the Committee on Labor and Housing

**RE: Testimony Neither For Nor Against to LD 1483, An Act To Make Agricultural Workers and Other Related Workers Employees Under the Wage and Hour Laws**

My name is Eric Venturini, and I am the Executive Director of the Wild Blueberry Commission of Maine (WBC).

Maine's wild blueberry industry employs 2-3000 people during peak harvest season. Agriculture in Maine is inherently and unalterable seasonal, and too few Maine residents are interested in seasonal work to fill the workforce demands of Maine's seasonal economy. Many of those that work during the harvest season—whether in the fields, processing, or packing—are seasonal workers, often from foreign countries. Many, if not all, foreign and migrant agricultural workers are housed at producers' expense either on or off-site.

The title of this bill is to protect the rights of agricultural workers. On behalf of Maine's wild blueberry industry, I support that objective. Agricultural workers should be respected and treated well for the incredibly demanding work they perform to help feed America. Several layers of agricultural worker protection laws exist today to guide employers and to hold bad actors accountable. I have summarized them below for the convenience of the Committee.

**Agriculture's Regulatory Context**

**Migrant and Seasonal Workers Protection Act (MSPA)<sup>1</sup>**

- Protects workers performing seasonal or temporary agricultural work or whose work requires them to be absent overnight from their place of residence

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<sup>1</sup> The Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801). US Department of Labor.  
<https://www.dol.gov/agencies/whd/laws-and-regulations/laws/mspa>



- Covers all agricultural workers on a farm if any single worker is covered
- Applies to all farm labor contractors and anyone transporting agricultural workers
- Housing must be certified by State or local health authority that it meets health and safety standards
- US Dept. of Labor has unfettered access to inspect housing and vehicles
- Includes various wage, recordkeeping, health and safety, and discrimination protections

### **H2-A Agricultural Worker Visa Program eligibility and compliance requirements<sup>2</sup>**

- Covers workers brought to work in agriculture in the U.S. through the H2-A Visa Program
- Employers may only use program if employment of foreign workers will not have an adverse effect on wages and working conditions of similarly employed U.S. workers
- Pay must be equivalent to the adverse effect wage rate (AEWR), which this year is \$16.95 per hour
- Guarantees employment of at least 75% of the workdays in the contract period
- Housing that meets stringent safety standards must be provided at no cost to employees
- Employees must receive 3 meals a day at no cost, or be provided with free and convenient cooking and kitchen facilities
- Transportation from housing to work site, and into and out of the country, must be provided at no cost to employee
- Employer must keep detailed records
- Employers cannot discharge without just cause – any person who has filed a complaint, consulted with an attorney, or an employee of legal assistance program, testified, or in any manner, exercised or asserted on behalf of himself/herself or others any rights or protections afforded.
- There can be no strike or lockout during a labor dispute at the worksite
- Employers cannot hold or confiscate workers' passports or other immigration documents

### **Fair Labor Standards Act (FLSA)<sup>3</sup>**

- Holds employers accountable to the Federal minimum wage
- Holds employers accountable to Federal child labor laws
- Includes various recordkeeping requirements
- Sets US Dept. of Labor litigation procedures
- Prohibits employer retaliation or discrimination against employees that have filed complaints or provided information.

<sup>2</sup> US Department of Labor, Wage and Hour Division. 2010. Fact Sheet #26: Section H-2A of the Immigration and Nationality Act. <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>

<sup>3</sup> US Department of Labor, Wage and Hour Division. 2016. Handy Reference Guide to the Fair Labor Standards Act. <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#11>



## **Occupational Safety and Health Act (OSHA)<sup>4</sup>**

- Includes regulations that apply to worker accommodations including at least 50 ft<sup>2</sup> per occupant, a minimum 7-foot ceiling, at least 3 feet between beds, and many other specifications
- Requires signage to point out hazards
- Includes safety specifications for tractors, including roll over protection
- Includes stringent rules on the availability of sanitation facilities, drinking water, and handwashing. For example, water must be dispensed in single-use drinking cups or by fountains.

## **Maine State Laws**

- Employers must provide workers' compensation to certain classifications of agricultural employees or workers (MRS Title 39-A §101 and 39-A §401(1)(B) and (C))
- Agricultural workers must be protected from safety and health hazards and working conditions must be reasonably free of such hazards (26 MRS §580-581)
- Subject to Maine's *Employment Practices* (Title 26, Chapter 7, Subchapters 1 – 12)

These myriad laws are frustrating, often duplicative, burdensome and costly to agricultural employers, especially small operators without their own HR department or other staff, simply because there are so many different rules under so many different regulatory frameworks.

## **Suggestions for LD 1483**

### **Definition of "Key service provider" (§647 (1) (C))**

It is important that health professionals and other essential service providers are allowed access to agricultural employees. The wild blueberry industry is deeply appreciative of the great work that, for example, the Maine Mobile Health Program does to provide Maine's migrant workforce with access to health care. Their services, for example, were critical in bringing COVID-19 rapid testing and vaccinations to agricultural workers over the last few years.

However, by including in this definition the catchall phrase of "any other service provider to which an agricultural employee may need access" is too broad. This provision will allow any person who defines themselves as an "agricultural service provider," with free access to the private property of the employer at any time to seek out employees who are on break. Consider the example of a solicitor entering worker housing and disturbing both employees and the employer. This bill would provide employers with no recourse to prevent solicitors from trespassing on private property.

### **Flexibility in Section 3**

Clearly, we do not support employers who may try to use threats, physical force, or violence to prevent a worker from entering housing. As I stated earlier in my testimony, bad actors should be held accountable for such actions.

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<sup>4</sup> US Department of Labor, Occupational Safety and Health Administration. Safety and Health Topics, Agricultural Operations. <https://www.osha.gov/agricultural-operations/standards>



There is also a federal requirement (OSHA, 26 MRS §580-581) and a basic workplace expectation that employers protect workers from safety and health hazards in the workplace. Unfortunately, there may be times when housing needs to be repaired in order to maintain it in good order. There are also, unfortunately, on occasion bad actors on the employee side that for reasons of safety may need to be prevented from entering worker housing. Consider cases of alcohol abuse, domestic violence, and other, similar situations.

I ask this committee to consider adding flexibility to account for situations where employers may need to bar access to housing in order to maintain a safe and healthy workplace.

Thank you for your time. I would be happy to answer any questions that you may have.

