



STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002
(207) 287-1300

RACHEL TALBOT ROSS
SPEAKER OF THE HOUSE

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Testimony of Speaker Rachel Talbot Ross presenting
**LD 2273, An Act to Establish a State Minimum Hourly Wage for
Agricultural Workers**
Before the Joint Standing Committee on Labor and Housing

Senator Tipping, Representative Roeder, and esteemed members of the Joint Standing Committee on Labor and Housing. I am Rachel Talbot Ross, I represent District 118 on the peninsula of Portland, and I serve as the Speaker of the House. I am here to present the Governor's bill, LD 2273, An Act to Establish a State Minimum Hourly Wage for Agricultural Workers.

I'll begin today by outlining the forces of history that have brought us to this moment, and then I'll discuss in some detail the bill before you.

Agricultural workers have historically been treated separately from other laborers under the law, left behind even when others take major steps forward in securing the right to work and live with dignity. The Fair Labor Standards Act, passed in 1938, established a minimum wage, outlawed the use of child labor, and mandated the payment of overtime wage rates¹, with an exemption for agricultural workers. Later amendments to the law removed the exemptions for minimum wage for some, but not all, agricultural employees – those who are family members of farmers or who work seasonally for a piece-rate and commute from their homes to work, just as examples, still do not enjoy the benefits of a federal minimum wage or overtime law. Further, in over twenty states around the country, including in Maine, farmworkers are not subject to the same state minimum wage law as other workers – meaning that in this state, farmworkers can make the federal minimum wage, \$7.25 an hour, or less. This is in contrast to H-2A workers, who are foreign nationals to whom a separate minimum wage set by the federal Department of Labor applies.

¹ The Fair Labor Standards Act Of 1938, As Amended. 29 U.S.C. 201, et seq.

We should understand this exclusion to be part of an unjust structure, crafted by our forebears and handed down to us by generations of continued harm. The legislative record is stark on this point. Domestic and agricultural labor formed the foundation of the plantation system, and the exploitation of Black workers for cheap labor continued well into Reconstruction. In the 1930s, lawmakers crafting historic laws such as the FLSA found a sticking point in these rights' application to agricultural workers, for Southern lawmakers were adamant that this would undermine the vestigial plantation system. According to Georgia Democratic Representative Edward Cox, setting a minimum wage for agricultural workers would allow for the "elimination and disappearance of racial and social distinctions, and...throw into question the determination of the standards and customs which shall determine the relationship of our various groups of people in the South." At the time, 57% of U.S. farm labor lived in the South and 51% of those workers were Black.² Congress finally took action to rectify some of those exclusions in 1966, the result of which is the law that we have today: an FLSA that applies partly, but not completely, to farmworkers.

The continuing inequalities in the law have a real impact for the many agricultural workers in the United States today. Today, there are 2.5 to 3 million agricultural workers in the United States. Recent demographic data from the National Agricultural Workers Survey showed that 24-25% of farmworkers were born in the United States, while the rest were foreign-born. 83% of all farmworkers identified as Hispanic. Incomes nationally remain low, with average and median *personal* incomes falling within the range of \$17,400-\$19,999 and average and median total *family* income falling within \$20,000 to \$24,999. Concerningly, a third of farmworkers, those who do the hard work of growing the food for our tables, had family incomes below the Federal Poverty Level.

Here in the state of Maine, we know that agricultural products like blueberries and potatoes are important components of our economy and our state's identity. Maine shipped \$263 million in domestic agricultural exports abroad in 2017. Maine leads the world in production of wild blueberries, and it is second in the nation in the production of maple syrup.³ The 2017 USDA Census reports that 2,230 farms hired 13,440 workers (9,314 of whom worked 150 or fewer days). There were 108 farms that reported hiring 2,191 migrant workers.

The demonstrated success of the industry is intertwined with the hard work of thousands of Mainers, and they deserve fair pay. The Maine Technology Institute's October 2023 Sector

² From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act. Before the U.S. House of Representatives Education and Labor Committee, Workforce Protections Subcommittee. 117th Congress (2021) (Rebecca Dixon, Executive Director of the National Employment Law Project).

³ National Institute of Food and Agriculture, U.S. Department of Agriculture. <https://www.nifa.usda.gov/about-nifa/blogs/wild-blueberries-maine-event>

Assessment showed that 3,115 farmers, ranchers, and other agricultural managers were employed in Maine with median hourly earnings of \$14.23. H-2A workers earn \$17.80 an hour in Maine. However, median figures should be treated with caution: a 2021 study conducted by the University of Maine Cooperative Extension and the Maine Vegetable and Small Fruit Growers Association showed that for multiple categories, the low end of the pay range fell below the then-state minimum wage. Entry-level farm laborers' low end of the pay range was \$8.00 per hour, and experienced farm laborers in Southern Maine were earning \$9.00 per hour at the low end of the range.

This means that we have a large population of workers who are left vulnerable both by the instability of the work and by gaping holes in the laws intended to guarantee a liveable wage and stable employment to workers. Currently, farmworkers are much more likely to live in poverty than other Mainers: about one-quarter of Maine farmworkers live in poverty, making them roughly 4.5 times as likely to live below the poverty line as other Maine workers.⁴

It is clear that the construction of a more equitable system of compensation and labor will take work far beyond today and beyond this legislative session. But the bill in front of you is responsive to the urgency of the moment: it takes critical steps forward along that path, and its passage will aid us in improving the lives of workers right here and right now.

I'll take a moment to thank those who led and participated in the Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers, which was convened by the Governor's Office following the veto of LD 398, legislation that sought to expand the minimum wage to farmworkers. This bill includes two recommendations of the Co-Chairs of the Committee, Department of Labor Commissioner Laura Fortman and Department of Agriculture, Conservation and Forestry Deputy Commissioner Nancy McBrady.

Concretely, this bill takes the following steps.

1. First, this bill provides that people employed to perform agricultural labor may not be paid at a rate less than \$14.15 per hour, the state minimum hourly wage that was in effect February 7, 2024.
2. Secondly, this bill provides that employers who employ individuals to perform agricultural labor are required to keep a true and accurate record of the hours worked by each employee and the wages paid to each employee. This was determined to be critical by the Co-Chairs of the Committee for two reasons. First, it is the method of verifying compliance with the law. Secondly, most farm employers are already required to comply with some form of recordkeeping, so any additional administrative burden is likely

⁴ MECEP analysis of US Census Bureau, American Community Survey, public use microdata, 2015-2019 five-year average using the Integrated Public Use Microdata System (IPUMS)
<https://www.mecep.org/blog/farmworkers-deserve-the-same-rights-as-all-workers/>

minimal. Recordkeeping is necessary to make the law operational: in instances where there is a dispute about compliance, records provide a valuable aid in resolving the dispute. Further, the requirement to provide farmworkers with a paystub allows them to understand their pay calculation and verify that they have been paid minimum wage.

3. Thirdly, this bill provides remedies for employees and penalties for employers for unpaid minimum hourly wage violations. An employer is liable to an employee for the amount of any unpaid minimum hourly wages and an equal amount for failure to comply with the law, and the Department of Labor has exclusive authority to bring an action for unpaid wages on behalf of an employee or employees under this section.

Before I conclude, I'll note just that I have ongoing concerns with the absence of a private right of action. This was, to my knowledge, not a subject of discussion of the Committee, and I believe that it should be the subject of great scrutiny. I believe that legislation should allow individual workers to bring a lawsuit based on alleged violations of this law.

I'll conclude by recognizing the generations of activists who have pushed this work forward for years. Despite limitations in labor organizing that are unique to agricultural workers, it is thanks to the work of groups like the United Farm Workers, the Mississippi Freedom Labor Union, civil rights activists, and other organizations and individuals, including many right here in Maine, that farmworkers have made significant progress towards securing the right to live and work with dignity. You have before you the opportunity to move us forward toward that more just place, and I ask that you consider this bill as such. I urge you to vote "ought to pass", and I am happy to answer any questions you may have.