Testimony on The New York Farmworkers Fair Labor Practices Act
May 2nd, 2019

The Northeast Organic Farming Association of New York (NOFA-NY) has been advocating and educating organic farmers and consumers since 1983, and, is the largest USDA-accredited organic certifier in New York, certifying over 1,000 organic operations.

NOFA-NY member farmers agree with the basic intentions of the 2019 New York Farmworkers Fair Labor Practices Act (S2837/A2750 and S3843). In 2019, our members voted for this resolution: “The members of NOFA-NY affirm that we stand for fairness for all of the people who work on farms, farmers and hired workers alike, and would support a revised version of FFLP if family-scale farmers and representative farmworkers, including both NYS residents and immigrants, can be at the table to negotiate final language.”

However, due to the financial burden, NOFA-NY cannot support this version of the bill. Specifically, the following three provisions: overtime wages calculations, housing inspections, and unemployment insurance.

Versions of this legislation failed in 2006, 2008, 2010, 2012, 2014, 2016, and, again, in 2018. The issue of immediate implementation of overtime pay has been the most significant cause of these repeated failures.

Overtime Provisions. The overtime pay provisions of both Acts would increase the costs of farm labor for New York farms significantly, impacting their economic viability and ability to compete with farms outside of New York. Overtime pay provisions should use the model of New York’s minimum wage legislation, which accounts for differences among business models and the state’s regional economies, as well as other important agricultural states’ farmworker overtime pay provisions that recognize their respective, unique situations.

In 2013 NOFA-NY farmers did not support the FFLP requirement for immediate implementation of time and a half for overtime. Any approach to farmworker overtime compensation must recognize the value of our hired farm labor as well as the challenges of family farming. There are several reasonable options:

• accommodation of the seasonality of agriculture, by providing for seasonal changes in overtime pay applicability;
• a higher, seasonally adjusted, overtime pay threshold, such as 120 hours in a two-week period;
• overtime rates that increase as hours worked increase, for instance, from 1.1 hours for hours worked over 40 in a week to a maximum of 1.5 time for hours worked over 120 in two weeks; and,
• multi-year, phased implementation, with extra time for small-scale family farms to comply.
Unemployment Insurance. Lowering the trigger for required payment into Unemployment Insurance from $20,000 to $6,250 will not benefit full-time farm workers and will be a burdensome tax on small family-scale farms that only hire one or two part-time employees.

Housing Inspections. Requiring a permit and a Department of Health inspection of farm housing for housing of even one worker will discourage small farms from providing housing. Instead, all farm housing should be required to adhere to the State Sanitary Code, and farmers who provide on-farm housing for fewer than 5 employees should continue to be exempt from inspections under the Public Health Law. Inspections on these ‘exempt’ farms could be triggered by a complaint to DOH which could move that farm out of the exempt category.

To be fair to our farmworkers and small and mid-scale family farmers alike, any legislation must provide compensating measures to help farmers adapt to increased costs associated with farmworker overtime pay, without cutting farmworkers’ hours or reducing food production.

It is important to NOFA-NY members to link justice for farmworker with justice for farmers. A 2008 NOFA-NY resolution endorses the implementation of local fair trade. Everyone involved in the organic supply chain from seed to plate is entitled to living wages, a safe workplace, and respectful treatment. Farm prices should enable farmers to cover the costs of production, sustain their families and farms, including a living wage for all farmworkers, and additional revenues to ensure the continuing development of the farm. Farmworkers should enjoy the rights to freedom of association that are protected by law for workers in other sectors. Fair and transparent negotiations should provide long-term contracts between the buyers of organic productions and farmers, and between farmers and farmworkers.

Any solution to the complex issues of fair pay rates to farm workers is balanced with the need for fair prices to farmers for their products. In 2017, the members of NOFA-NY voted “to work for regulations and legislation that will increase the farmer share of the food dollar so that farm income covers the full costs of production including living wages for farmers themselves and for all of the people who work on farms.”

I would just like to repeat that the implementation of overtime pay is the most significant issue with this legislation. Until that is addressed, this bill will only hurt farmers, farmworkers, and consumers.

Thank you for this opportunity to present the perspectives of organic farmers, which is the fastest growing agriculture sector in New York State, on this important legislation.

*End of Oral Testimony*
Farms are fragile. Farmworkers who have families in Mexico and Guatemala depend on the long hours they work to earn enough money to send home, often to build family homes and farms of their own. Many small and medium sized farms struggle to remain viable, while farm owners sometimes pay farmworkers and forgo their own pay. Industrial agriculture, lack of farm parity, lack of implementation of anti-trust legislation, and ineffective federal farm policies contribute to the current state of family farms. To enact legislation to increase wages for farmworkers, the following steps also need to be taken:

- **Make significant increases in the farmworker tax credit** afforded by the New York Farmworker Retention Credit program.
- **Fund technical assistance to farmers to help them build strong farm teams** with improved labor retention rates and higher worker satisfaction so that farm work becomes more attractive as a career.
- **Pass legislation in support of fair contracts for farmers** along with limitations on the middleman’s share of the final food dollar;
- **Support anti-trust**, to reduce the control exercised over farmers by the businesses that supply farm inputs and purchase from farmers for retail or processing.
- **Eliminate farmer H2A Unemployment Insurance Benefit (UIB) payments**, made on behalf of federal program guest workers, who can never use the benefit.

The majority of **New York organic farms are small and family owned and operated**. NOFA-NY surveyed our farmer members on labor issues in 2018, and on their response to FFLP in particular in 2013. The 2018 survey and report found that farm family members provide much of the labor, working side by side with hired farmworkers. Some of those workers are neighbors who work part time on the farms, others have longstanding, multi-generational relationships with their farm family employers.

A small percentage of organic farms hire immigrant workers and an even smaller percentage (less than 5%) use the H2A program. **All of the farms that responded to the survey were paying more than the state 2018 minimum hourly wage of $10.40** to their employees. The lowest pay rate was $11.37 on average. The average highest rate reported was $15.09, but seven farms paid $20 per hour and four paid $17.50. This is in line with the 2012 USDA study that showed that New York hired farm labor costs, as a percent of crop production sales value, are substantially higher than those costs in most of the nation.

The members of NOFA-NY **support the right of farm workers to freedom of association**. In 2010, our members voted in favor of a resolution that stated: “**we strongly support legislation that would grant collective bargaining rights to farmworkers, and legislation that would establish the same minimum wage for all employees regardless of age.**”

Over 12% of NOFA-NY farm members responded to the 2013 survey on the FFLP. Here is a brief summary of their responses:

**Housing:** NOFA-NY members did not agree that the state regulations on farmworker housing should be changed so that even if housing were provided for one worker, there would be
inspections. Our members would prefer that if a farm has housing for four or fewer workers that an **inspection should be triggered by a complaint.**

**Day of Rest:** Members support consecutive 24 hours of rest per week, as long as the timing is flexible and a worker can choose voluntarily to work.

**Unemployment Insurance:** FFLP bill proposes to reduce the exemption. Our members would like to keep the current unemployment exemption at $20K/Quarter.

**Workers’ Compensation:** Our members are paying Workers Compensation, but would like to see the rates adjusted to accommodate the limited revenues of the smallest farms. Certified Organic farms should pay a lower rate than farms that expose employees to toxic chemicals.

**Changing climate is an increasing threat to New York food production.** During the past five years, unusually warm winter spells followed by unusually cold spring spells have decimated fruit production and unusually severe storms and extended periods of precipitation have ruined crops. Our state’s production capacity and the ingenuity and resilience of our farmers and farmworkers have sustained our local food supply. However, decreasing revenue and increasing, weather-driven production uncertainty coupled with significant labor cost increases will jeopardize that production capacity.

Again, NOFA-NY member farmers agree with the basic intentions of the New York Farmworkers Fair Labor Practices Act. In 2019, our members voted for this resolution:

> “The members of NOFA-NY affirm that we stand for fairness for all of the people who work on farms, farmers and hired workers alike, and would support a revised version of FFLP if family-scale farmers and representative farmworkers, including both NYS residents and immigrants, can be at the table to negotiate final language.”

We believe that farmworkers, citizen and immigrant, documented and undocumented, are entitled to respect, security, the dignity of productive work, and a decent living. And we believe too that our small and mid-scale family farmers are entitled to the same. Any legislation, to be truly beneficial, must consider the well-being of our farmworkers and farmers and our local food supply and the New Yorkers who benefit from it.

We offer this information in the belief that it will be useful in future consideration of balanced and equitable public policy that will benefit both New York farmworkers and small and mid-scale organic family farmers.

Please feel free to contact us as the email addresses below.

Thank you,

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