

The FARMER and COMMUNITY ADVISORY COMMITTEE

an independent, elected body representing the producers and community served by
GrowNYC Greenmarket

Fair's Fair...the New York Farmworkers Fair Labor Practices Act

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Currently, there are renewed calls for increased protections and benefits for New York State farmworkers. Proposed legislation, the Farmworkers Fair Labor Practices Act (S1291/A 4762), now being considered in the New York State legislature, would guarantee all farmworkers: collective bargaining rights; a weekly day of rest; unemployment insurance, disability, and workers compensation; housing standards applied to all employer provided farmworker housing; and mandated overtime wages of time-and-a-half for any work performed over eight hours in a day or 40 hours in a week. Similar legislation failed in 2010, 2012 and 2014 because of what seem to be irreconcilable positions on the part of proponents and opponents of the proposed law. To New York farmers, the most impactful of these provisions is the proposed overtime mandate.

There is no doubt that the goals of this legislation are laudable and that change is essential. A just food system must provide a decent living and dignity to the people who labor to put food on our tables, both farmworkers and farmers. Even the best intentions, however, if uninformed by the realities of the business of farming in our state, can be injurious, negatively affecting farmworkers and farmers. In fact, the Farmworkers Fair Labor Practices Act (FFLPA) simply is not balanced; while there is much-needed focus on the compensation of farmworkers, there is absolutely no regard for the financial impact this bill will have on the small and mid-scale, family farms that employ many of them. If enacted as written, the Farmworkers Fair Labor Practices Act will provide a short-term political victory for its proponents. In the long term, however, it will have the effect of plowing under regional food and farming, as we know it in New York, only benefitting unsustainable, industrial agriculture, and, ultimately, negatively impacting farmworkers.

Because of the negative impact that aspects of the proposed legislation, as written, would have on both farmers and farmworkers, the Farmer and Community Advisory Committee (FCAC) of New York City's Greenmarket, a program of not-for-profit GrowNYC, is committed to advocating for the creation of meaningful policies that promote both the security of the farmworkers who are employed to work the fields, as well the farmers who employ them.

The FCAC is a volunteer, deliberative body established to help guide Greenmarket in the execution of its mission of supporting regional family farming by facilitating the distribution of regionally produced food in New York City communities. The FCAC consists of a group of regional family farmers and value-added producers attending Greenmarket farmers' markets and city residents who support the Greenmarket mission. The FCAC believes that the goal of achieving fair and effective New York State farm labor policies only can be achieved if all of the

interested and affected constituents work together to create a Farmworkers Fair Labor Practices Act that is good for all of us connected in our regional food chain, those who labor to put good food on our tables - farmers and hired farmworkers alike - and those who depend on them.

In this spirit, we provide our assessment of the proposed legislation and recommendations about how those who care about our regional food shed, and the farmers and farmworkers who bestow its bounty on us, can move forward together to finally achieve fair and equitable legislation.

Greenmarket Farmers' Labor Realities

Greenmarket, a program of the not-for-profit GrowNYC, is the largest open air farmers' market program in the country, operating 54 market locations throughout New York City's five boroughs, hosting more than 240 regional agricultural producers working over 51,000 acres of farmland, and serving a representative cross section of New York City residents, from the Bronx to Union Square. Nearly all of our markets accept food stamps and other low-income food assistance program instruments, like Health Bucks. Our farmers' food stamp sales reach about \$1,000,000 annually, the highest amount attained among the nation's farmers' markets. While farmers from seven states are represented in our markets, over 71% come from New York State and would be impacted by this legislation.

The farms that participate in the Greenmarket program vary in size, type, and employment practices. Typically, Greenmarket farms provide a range of amenities to farmworkers; free housing, free food, free utilities, free cable television, and free laundry facilities. Some provide medical benefits, and others overtime pay, profit sharing, and equity.

Compensation for farmworkers also spans the gamut; for example, the federal guest farmworker program requires an hourly wage of \$11.74, higher than the current New York State minimum hourly wage of \$9.00. The average farmworker hourly wage paid by Greenmarket farmers is about \$11.50, though some pay over \$20 per hour, significantly higher than the applicable accelerating upstate New York minimum wage that will reach \$12.50 in 2020. And, other New York farmers, depending on location and type of farming, pay higher rates.

For the most part, farms in New York State are small, family businesses. New York farms are about 214 acres on average, compared to 446 acres nationally. 98% of New York farms are family owned and 80% of New York farms have a gross income of less than \$100,000 annually. The crops grown on diversified fruit and vegetable farms, the kind of farms we are fortunate to have in New York, are among the most labor intensive. To be clear, farmers are farmworkers too; there is no farm on which the family owners are not working long hours in the fields under arduous conditions. According to the Department of Labor, nationally, hired farmworkers provide about 33% of farm labor, with principal farmers and their families providing the remaining 66%.

Typically, farms' three greatest categories of annual expenditure are labor, energy, and taxes. According to the 2012 Census of Agriculture in New York State, conducted by the USDA, New York farms, on average, spend \$14.20 on labor costs per \$100 of farm product

sold, compared to \$8.50 per \$100 nationally. In a survey of our Greenmarket farmers, we found that they spend an average of 40% of their sales value on hired farm labor, as compared to the aforementioned average of 14.2% statewide and 8.5% nationally.

Much of the nation's agricultural sector has done well in the past decade, but it is the larger, industrial-scale, commodity-producing farms of the west and south, not the small and mid-scale, diversified, family farms of New York, that largely benefitted from a formerly strong, global, commodity market.

The Farmworker Fair Labor Practices Act Impact on Farms and Food

The impact the proposed overtime provisions of the FFLPA would have on our state farmers cannot be overstated. The FFLPA overtime provision would add very significant costs to small and mid-scale family farms, particularly those that must rely more on manual labor than on mechanization to produce a diversity of products, including healthful vegetables and fruits. These are the farmers who are aiming to improve, not deplete the soil, protect our watershed, and grow wholesome food to deliver fresh to the five boroughs of New York City. They are also the farmers that struggle year after year with startlingly low operational margins. In fact, since 1980, New York has lost an average of three farms every week. Under the FFLPA, as it currently is written, most Greenmarket farms would be required to pay overtime on a daily basis for four to six months per year, the peak of our regional growing season, increasing already high labor costs by an extraordinary 15% to 100%.

These farms cannot simply absorb this very significant cost increase. They will be forced to choose between maintaining their current labor-intensive, diversified, and sustainable crop production or shifting toward industrial mono-cropping. Some will be forced to consider reducing staff's working hours to stay below the overtime threshold, thereby decreasing the staff's total compensation, while hiring other staff to complete the work. Many will need to raise the prices of their products, making them less competitive in our regional marketplace; they are competing directly with farms in other, nearby states with lower costs of production as well as Hunts Point wholesalers selling over \$2 billion worth of food each year, much of it produced with the labor of some of the most exploited workers on the globe. Their financial situations might simply become completely untenable, leading them to shut down farm operation. None of these options are good for New York State's economy, its farmland, its consumers, who benefit from fresh, healthful, regionally produced food, or its farmworkers, who the bill purports to help.

Solutions

Cutting through the rhetoric of both sides, it would seem that proponents of the current bill are content to ignore the economic facts of family farming and that opponents are in denial of the economic plight of farmworkers. While the proponents and opponents of the FFLPA attempt to influence state legislators, the FCAC hopes that they will come together to better understand the perspectives and goals of each other and encourage a balanced, comprehensive approach that addresses the economic needs of farmers and farmworkers alike. In this vein, the Natural

Resources Defense Council and Shearman & Sterling LLP helped explore what sixteen other states have done to address farmworker labor practices.

States that have successfully enacted farm labor laws wisely have provided flexibility to accommodate factors such as different farm business sizes and seasonal fluctuation in labor requirements. It is imperative to note that no state law is as sweeping as the proposed New York State law. And, no state can rectify the consequences of the federal government's long-standing inability to create a stable agricultural work force - a dangerously dwindling supply of farm labor and the injustice confronting half a million, hard-working, undocumented farmworkers.

Here is how the FFLPA compares to ten of sixteen other important agricultural states with such laws:

- Seven states—California, Hawaii, Florida, Massachusetts, New Jersey, Oregon, and Wisconsin—grant farmworkers the right to organize and collectively bargain.
 - The right to organize in Florida is codified in the state constitution. There is no regulatory agency or labor relations board to provide enforcement.
 - Unionization is only available to farmworkers in Massachusetts if they are part of a permanent workforce composed of at least 4 employees.
 - The right to organize in Oregon applies only if, in a calendar quarter, the farm employer pays at least \$20,000 in wages or employs at least 10 individuals.

- Three states—California, Maryland, and Pennsylvania—guarantee a weekly day of rest.
 - California farmworkers may waive their guaranteed day of rest, but work on that day will earn them accelerated overtime wage rates. See below.
 - In Maryland, the day of rest is chosen by the farmworker and submitted to the employer in writing. Farmworkers are entitled to a triple wage rate if forced to work on their chosen day of rest.

- And four states— California, Hawaii, Maryland, and Minnesota—provide time-and-a-half overtime wage rates for farmworkers.
 - Overtime in California applies for work in excess of 10 hour in a day. If working on the weekly day of rest, farmworkers receive a time-and-a-half wage rate as standard and a double wage rate as overtime.
 - Hawaii's overtime law applies for work in excess of 40 hours in a week. However, the law exempts coffee farms, fishermen, or farm businesses with fewer than 20 employees; and all other farms may elect 20 weeks in the calendar year during which the weekly overtime threshold is raised from 40 hours to 48 hours.
 - Overtime in Maryland applies for work in excess of 60 hours in a week.
 - Overtime in Minnesota applies for work in excess of 48 hours in a week.

The proposed FFLPA paid overtime provision will have the most significant impact on small and mid-scale, family farmers. Notably, the higher weekly overtime thresholds in states' existing

laws serve to accommodate the seasonality of agriculture and farm business size. They keep farm labor costs from skyrocketing during the lengthy harvest days of summer while also protecting farmworkers from exploitation and rewarding a truly hard day's work. New York State should adopt a formula that works for our farmers and farmworkers, and for consumers, guided by other states' laws and by our own groundbreaking minimum wage increase that recognizes important differences among our regions and various business models. Reasonable approaches to overtime compensation, recognizing the nature of farm work in New York, might include: a different hourly trigger; marginal overtime rates that increase as hours worked increase to a maximum of time-and-a-half; seasonal applicability; and a longer reference period than eight hours in day and 40 hours in a week.

The production of food in New York State is good for our economy, our health, and the health of our environment...the more the better. We fully support the goals of the Farmworker Fair Labor Practices Act and, in doing so, believe strongly that the increased financial burdens it would create for farmers must be offset through mechanisms other than higher food costs to consumers, that would disproportionately affect our neighbors with inelastic food budgets. However, we cannot enjoy the food grown in New York knowing that many of the hired farmworkers who help produce it have trouble putting that good food on the tables of their own families. Nor can we enact legislation that will impact so negatively on the viability of New York family farms, farming, and the sustainable availability of regionally produced food.

Proponents of the Farmworkers Fair Labor Practices Act and our legislators, representing both upstate and downstate constituencies, must address the legitimate economic needs of farmers and farmworkers, for it takes both to supply the bounty of New York food we enjoy. We need to give farmworkers living wages and we need to consider carefully the economic burdens of family farmers. To do otherwise benefits no one and only will result in the further loss of farms and farmland, and a shrinking state economy, a result that is nothing but harmful to the very farmworkers this legislation seeks to support.

We call on all advocates working to build a sustainable and just food system to do the following:

1. Advocate for a New York State farm labor policy that creates realistic and fair farmworker overtime compensation and that provides offsets to higher farmer costs, other than higher prices for the food our farmers produce;
2. Advocate for a federal farm labor policy that does not pit farmers in different states against one another. (Note: Farms from six other states in our region, with lower labor costs of production, are represented at Greenmarket.);
3. Advocate for a federal immigration policy that recognizes the vital role that non-citizens, regardless of arrival method, play in putting food on our tables and that provides them with dignified and equitable economic opportunities; and

4. Ensure that farmers, farmworkers, and those representing them, actually talk and listen to one another, so that we can create a system that is to the benefit of all those who work to feed us.

Signed,

FCAC Members: Amanda Andrews, Robin Puskas, Fred Wilklow, Chip Kent, Alfred Milanese, Ron Samascott, Robin Burger, Ed Yowell, Kate Galassi, Tom Maynard, Morse Pitts, Kelly Verel, Sharon Leader, Hilary Baum, Stephanie Villani, Stanley Osczepinski, Joe Morgiewicz, Tom Toigo, Maggie Miller, Beth Linskey and Matt Igoe.