Testimony

House Labor Relations Committee Hearing on House Bill 2369

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Offered by
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Good morning, Mr. Chairman and members of the Committee. I am John Bell, and I currently serve as Governmental Affairs Counsel for Pennsylvania Farm Bureau. I am offering testimony today on behalf of Pennsylvania Farm Bureau and the more than 42,000 farm and rural families in the Commonwealth who comprise our membership. We want to thank you for the opportunity to offer our thoughts on House Bill 2369 and its attempt to recodify the state's child labor laws.

The proposed legislation contained in House Bill 2369 has had a pretty long history. This is the fourth legislative term in which this proposed legislation has been considered by the General Assembly. While some changes have been made, the proposed legislation contained in House Bill 2369 predominantly reflects the legislation contained in House Bill 2780, which was introduced during the 2001-2002 legislative term.

Nearly six years ago, on August 14, 2002, I offered testimony on behalf of Farm Bureau before this Committee. As we were supportive in 2002 of House Bill 2780's intended objectives, we continue to be supportive of legislative effort attempted in House Bill 2369 to make Pennsylvania's child labor requirements and limitations more consistent with those standards currently established in federal child labor statutes and regulations.

But the concerns that we expressed in 2002 over the drafted provisions in House Bill 2780 governing the employment of minors in agriculture were not subsided by subsequent revisions to the legislation.

And we remain concerned over how the limited exclusion from child labor requirements provided to agriculture under House Bill 2369 will be interpreted and applied in the context of specific employment situations around the farm.

Let me reference the specific provision that I am talking about. Subsection (b) of Section 15 of House Bill 2369, which prescribes the applicability of bill's requirements and restrictions in "agricultural employment" states:

> "Agricultural employment which is exempt from coverage of the child labor provisions of the Fair Labor Standards Act shall be exempt from coverage of this act."

We have four main concerns with the specific language contained in this provision:

(1) What does phrase "exempt from coverage of the child labor provisions of the federal Fair Labor Standards Act" mean in the context of the express requirements generally prescribed for employment of minors in House Bill 2369?

(2) How is the "exempt from coverage" exclusion for agricultural employment to be applied with respect to legislative areas not specifically addressed in the federal Fair Labor Standards Act, such as those requirements prescribed in House Bill 2369 for employers to ensure minors have work permits and have parental authorization?

(3) How is the "exempt from coverage" exclusion for agricultural employment in House Bill 2369 to be applied with respect to hours of employment? The Fair Labor Standards Act does not provide an absolute "exemption from coverage" with respect to hours in which minors may be employed, but does impose fewer restrictions in hours of employment of minors in agriculture than those that would be imposed under House Bill 2369.

(4) What is considered to be scope of "agricultural employment" for which Section 15(b)'s "exempt from coverage" exclusion for agricultural employment applies?

To better understand our concerns, I will try to give you a brief summary of current state and federal laws governing the employment of minors on farms. With the exception of minors who are "seasonal farm workers" under the state's Seasonal Farm Labor Act, our state's law fully excludes employers of "children employed on the farm" from the state's child labor requirements. But the scope of employment for which the exclusion to "children employed on the farm" applies has been interpreted to differ from the scope of employment for which special rules for employment of minors in "agriculture" would apply under the federal Fair Labor Standards Act (FLSA).

Depending on how House Bill 2369's "exempt from FLSA coverage" language is to be interpreted, Section 15(b) of the bill may have the legal effect of either virtually eliminating or greatly expanding the exclusion provided to employers under current law in the employment of minors on farms.

The federal Fair Labor Standards Act does not provide to agricultural employers blanket statutory "exemptions" from requirements, but rather provides special provisions that establish differing requirements for hours of employment, wages and tasks to be performed by minors that are defined in FLSA to be employed in "agriculture." The requirements and allowances provided and conditions under which a minor may be employed in agriculture under FLSA will depend partially on the age of the minor.

Minors under 14 years of age generally cannot be employed in agriculture without the consent of the minor's parent or person acting as the minor's parent. With very few exceptions, agricultural employers are prohibited from allowing any minor under 16 years of age to perform any activity that the U.S. Secretary of Labor has determined to be hazardous. And employers are prohibited from employing minors in agriculture during school hours.

With respect to wages that must be paid to minors, FLSA makes distinctions among classes of agricultural employers and among specific tasks that a minor may perform on the farm. While agricultural employers are fully exempt from requirements to pay overtime wages, only smaller

employers are fully exempt from requirements to pay minimum wages. Employers who have employed over 500 man-days of agricultural labor in any quarter of the previous calendar year are required to pay the federally mandated minimum wage rate to employees. Even for employers who have met this 500-man-day-threshold, FLSA has special provisions would allow certain minors employed to perform hand-harvesting activities to be paid wages based on a piece rate formula that may result in payment of total wages below FLSA's prescribed minimum hourly wage.

As mentioned earlier, what is considered to be "employment in agriculture" in FLSA likely differs from what is considered to be "children employed on a farm" in the state child labor law. For purposes of FLSA, "agriculture" not only includes those commonly recognized activities that are part of traditional farming practices. "Agriculture" also includes other activities performed on the farm which themselves are not farming practices but which are performed "as an incident to or in conjunction with" those farming practices for which the farmer is engaged. Activities related to the preparation of farm products for market, the direct marketing or processing of agricultural products produced by the farmer-employer, and the delivery of produced farm products to warehouses or shipment areas would be considered by FLSA to be a part of "agriculture."

Depending on how literally the term "agricultural employment" and the phrase "exempt from coverage from the child labor provisions" are to be read, there could be at least six different interpretations that could be applied to the exclusion to be provided under Section 15(b):

(1) The first interpretation would conclude that all agricultural employment of minors is excluded from all requirements prescribed in House Bill 2369, since agricultural employers are "exempt from coverage" of FLSA's mandates to pay overtime wages to minors or to any other farm employee.

(2) The second interpretation would conclude that there is no exclusion from any of the requirements imposed under House Bill 2369, since no agricultural employer is "exempt from coverage" in preventing minors under 16 years of age from performing tasks that the FLSA prohibits minors to perform as "hazardous."

(3) The third interpretation would conclude that the exclusion from House Bill 2369's only applies to agricultural employers who use not more than 500 man-days of agricultural labor in any quarter of the previous calendar year, since FLSA only provides a blanket exclusion from both overtime and minimum wage requirements to these agricultural employers.

(4) The fourth interpretation would conclude that since FLSA does not fully exclude agricultural employers from hours of employment requirements – as employers may only employ minors in agriculture "outside school hours" – there is no exclusion and agricultural employers must fully comply with all of the requirements and restrictions prescribed in House Bill 2369.

(5) A fifth interpretation would conclude that the "exempt from coverage" exclusion does not apply to areas in House Bill 2369 not addressed in FLSA's special provisions governing agricultural employment, such as the bill's requirements for work permit and parental authorization of all minors.

(6) The sixth interpretation would conclude that House Bill 2369 only imposes on agricultural employers of minors those requirements that the FLSA requires with respect to the employment of minors in "agriculture" as defined in FLSA, and excludes any of the bill's requirements or limitations that are not specifically required or prohibited by FLSA.

We would hope that the sixth interpretation would be the prevailing interpretation that would be applied. However, we are not confident that Section 15(b), as currently drafted, would guarantee the application of this interpretation.

If the true intent of Section 15(b) is to have state law's requirements and allowances for employers employing minors in agriculture mirror those requirements and allowances provided in federal law under FLSA, we believe the language contained in Section 15(b) needs to more clearly state this intent.

Farmers who regularly employ minors in their farming operations seem to have a good understanding of what FLSA requires and does not require them to do. A provision in House Bill 2369 to clearly recognize that the scope of employment considered to be agriculture and the applicable standards for employment of minors in agriculture are the same as those prescribed in the FLSA will give these farmers confidence that they will be in full compliance of all child labor laws if they comply with federal law.

You should realize that legislative provision equating state standards for employment of child labor in agriculture with the federal standards applicable under FLSA would technically have the effect of expanding farmers' current legal requirements. If House Bill 2368 fully incorporated the federal standards in the employment of minors in agriculture, FLSA's prohibition in employing minors in "hazardous" agricultural activities, as determined by the U.S. Secretary of Labor, would also become a state prohibition. We do not see this as a practical burden for farmers, since farmers have made a concerted effort to understand and comply with the applicable standards for child labor prescribed in FLSA.

In the past, we have made suggestions for change to Section 15(b) that we believe would satisfy our concerns. And we are certainly willing to work with this Committee and the General Assembly to arrive at language in House Bill 2369 that more clearly identifies what is considered to be agriculture and what standards do and do not apply to employment of minors in agriculture under the bill's recodification of state child labor law.

Again, we thank you for the opportunity to testify today. I will try to answer any questions you may have.