



*Working together for Ohio farmers to advance
agriculture and strengthen our communities.*

**House Ways and Means Committee
HB 166 Opponent Testimony
Jack Irvin, Vice President of Public Policy
June 13, 2023**

Chairman Roemer, Vice Chair Lorenz, Ranking Member Troy, and other members of the House Ways and Means Committee, thank you for the opportunity to provide opponent testimony on HB 166. The Ohio Farm Bureau has long supported the H2A program, and HB 166 is not only a large departure from current employment practices in Ohio, but it may have significant impacts on the ability of farm employers to safely and quickly deliver their products to market. H2A workers have been a vital resource for many years for farmers that are not able to find local labor for their operations, and especially now with the labor shortages most industries are experiencing, the H2A program remains vitally important to our members. This legislation has many potential adverse effects on how Ohio handles this program and may hamper our members ability to use the H2A program to hire employees.

First, some background on the H2A program. This extensively regulated and costly program allows for farmers to bring in guest workers for agricultural occupations. These workers are filling very specific and limited agricultural positions that are desperately needed to keep farms producing. However, before a farmer can utilize this program, they must demonstrate that they have attempted to recruit workers domestically, including through required job postings and referrals. Farmers must work through multiple state and federal agencies to participate in this program. Farm employers must certify to the federal government the types of jobs, the specific number of employees, and the time frame they will need employees. The farm employer must pay for the transportation from the employee's home country, as well as for their return trip home. The employer must provide housing that meets required standards. The employer must guarantee at least 75% of the contracted work will be available to the employee during the contracted time. And, the employer must pay a wage that is equal to the highest of the state minimum wage, the state prevailing wage, or the annually adjusted Adverse Effect Wage Rate as set by the Department of Labor. In Ohio, the Adverse Effect Wage Rate of \$17.17 per hour must be paid to H2A employees and any domestic employees in the same positions. Domestic employees must also be offered the same benefits, like housing and transportation, afforded to H2A employees. This program is incredibly complex and expensive for farmers to participate in, but it also provides a vitally needed workforce that is often unable to be recruited locally or within the time constraints necessary to keep food and other agricultural products on the shelves.

HB 166 would require H2A employers to withhold municipal income tax from an H2A employee, without any consideration of whether that individual employee is actually a resident of that municipality or not, and even though the employer is not within that municipality's jurisdiction. H2A employees are not permitted to use the social security or Medicare systems, and so their pay is not considered "wages" for purposes of the FICA tax - the standard typically used to calculate municipal income taxes. It seems unclear then how this new municipal income tax obligation will be calculated for these employees.



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Additionally, this could result in different municipalities choosing to administer this law in many different ways, further complicating municipal income taxes across Ohio and leaving employers with differing obligations based on municipality. Federal law also states that an employer cannot withhold federal income tax unless an H2A worker and employer agree, so it is unclear what implications there will be for employers if they are forced to withhold these taxes.

Furthermore, there is the question of extra-territorial jurisdiction of a municipality requiring a non-resident employer to withhold a municipal income tax. Currently, employers may withhold for a municipality that they are not located in (called “courtesy” withholding) but are not required, even for those employees who are clearly residents within a municipality. This proposal appears to be the only instance in Ohio law where an obligation to withhold for a foreign municipality would be required, and only will be required for a small subset of Ohio employers and in regards to the employment of only a small subset of employees. We do not believe requiring employers to do this for H2A workers makes sense either. Employers will have different legal requirements for local workers and H2A workers, something the federal program rules otherwise prohibit.

Finally, since H2A employees are present in this country on a visa which indicates their guest worker status, they are therefore not “residents” of this country and their employer must pay for them to return to their home country at the end of their contract. Their “residency” of any municipality is questionable, and cannot be determined based merely on their status as an H2A employee. H2A employee contract times will differ by farm and agricultural sector, and could range from several weeks to months. The municipal income system is already incredibly complicated, and this adds yet another layer of complication for a singled out set of employers and employees.

Thank you again for the opportunity to provide written testimony on HB 166.