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Chairman Reineke, Vice Chair McColley, Ranking Member Smith, and members of the Energy and Public Utilities Committee:

I am a practicing attorney in the Agricultural Worker and Immigrant Rights practice group for Advocates for Basic Legal Equality. My practice group has advocated for agricultural workers and immigrants for decades. This advocacy encompasses a wide range of issues facing these communities. This includes increasing language access and removing language barriers, which is why we testify today.

The House-passed a version of this bill (“HB 205”) provides:

“The contractor or subcontractor shall ensure that all class A and class B skilled journeypersons and apprentices performing construction services at a stationary source **demonstrate proficiency in spoken English.**”

Sec. 4145.03(A)(4), emphasis added.

Bill sponsors, Representatives Swearingen and Plummer, testified that the purpose of this bill is to keep Ohio workers and communities safe by setting minimum qualifications.¹ We want Ohio workers and communities to be safe as well, and think it is good to set minimum standards with this purpose in mind. The English language requirement in this proposed bill, however, does not serve this purpose.

This English language requirement is at best a causal fallacy and is more likely, and more malevolently, a requirement based in anti-immigrant, anti-latine sentiments.² This remarkably subjective, undefined requirement will serve not to keep the workforce safe or trained, but to keep immigrant workers out of the workforce.

Two federal entities charged with investigating and ensuring workplace safety, the Occupational Safety and Health Administration (OSHA) and the U.S. Chemical Safety and Hazard Investigation Board (CSB), are cited in this bill to reinforce the risky nature of this work. **Neither recommend imposing an English language requirement on workers.** This testimony will discuss what these entities do recommend.

Occupational Safety and Hazard Administration

OSHA is the premiere federal agency with expertise in workplace safety. It was appropriate for HB 205 to cite OSHA, but the English language requirement included in the bill strays far from OSHA’s regulations, policies, and research findings.

OSHA Regulations

¹ Ohio Congress, Senate Energy and Public Utilities Committee. 1st Hearing of HB 205, Sep., 20, 2023. Sponsor Testimony by Representatives Plummer and Swearingen.

² *Id.* In their testimony, Representatives Plummer and Swearingen cite an influx of workers from the Gulf Coast and Texas as a reason for setting the minimum standards in this bill, suggesting a more malevolent motive underlying this bill.

OSHA regulations detailing standards for communication of information about hazardous materials allows for multiple languages among the workforce. 29 CFR § 1910.1200(f)(10) provides:

“The employer shall ensure that workplace labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. **Employers having employees who speak other languages may add the information in their language to the material presented,** as long as the information is presented in English as well.”³

HB 205 also cites an OSHA regulation that provides procedures for owners and operators of high-hazard facilities to evaluate safety. An appendix to the regulation, states: “**If workers are not fluent in English then procedures and instructions need to be prepared in a second language understood by the workers.**”⁴

We interpret this language as welcoming employees who speak languages besides English, while ensuring they have the same access to information and training in their own language. OSHA interpreted its regulations similarly in 2010.

OSHA Policy

OSHA issued a 2010 memo interpreting its training requirements. It is directly on point, and provides:

“In practical terms, this means that an employer must instruct its employees using both a language and vocabulary that the employees can understand. **For example, if an employee does not speak or comprehend English, instruction must be provided in a language the employee can understand.** Similarly, if the employee's vocabulary is limited, the training must account for that limitation. By the same token, if employees are not literate, telling them to read training materials will not satisfy the employer's training obligation. As a general matter, employers are expected to realize that if they customarily need to communicate work instructions or other workplace information to employees at a certain vocabulary level or in language other than English, they will also need to provide safety and health training to employees in the same manner. Of course, employers may also provide instruction in learning the English language to non-English speaking employees.”⁵

OSHA Research Findings

An OSHA document, cited by HB 205, that analyzed hazards associated with processing and handling highly hazardous chemicals, requires a team at these sites to evaluate human factors in its hazard analysis. Human factors are defined as a “widely-recognized discipline of addressing interactions in the work environment between people, a facility, and its management systems.”

Surely, this could include what language is spoken, however, OSHA did not identify language spoken as a human factor workplaces failed to address. Instead, factors like confusing labeling and lack of clear emergency exit routes were identified.⁶

³ See also 29 CFR § 1910.1200(f)(2), (g)(2); 29 CFR § 1910.1026, App. A.

⁴ 29 C.F.R. § 1910.119, App. C.

⁵ OSHA Training Standards Policy Statement, Assistant Secretary David Michaels, April 28, 2010, emphasis added. (<https://www.osha.gov/laws-regs/standardinterpretations/2010-04-28>).

⁶ Process Safety Management for Petroleum Refineries, Occupational Safety and Health Administration, 12-13, 2017 (<https://www.osha.gov/sites/default/files/publications/OSHA3918.pdf>).

Overall, OSHA's regulations, policies, and research findings discourage imposing a language requirement on workers and **OSHA encourages increasing language accessibility in the workplace**. HB 205 ignores this wisdom from the premiere source on workplace safety in favor of an unnecessary, overreaching language requirement.

U.S. Chemical Safety and Hazard Investigation Board

House Bill 205 also cites the U.S. Chemical Safety and Hazard Investigation Board (CSB). Specifically, it cites the CSB's determination that "insufficient safety requirements for contractor selection and oversight were found to be causal" to accidents with hazardous chemicals. It does not determine language barriers or an employee's inability to speak English was causal.

A thorough search on the CSB's site turns up only three incidents where language barriers were at play. In each of these three cases, there were other factors that more directly led to the incidents. The most recent of these three incidents was 20 years ago. **Of the CSB's 954 recommendations, not one of them recommends imposing an English language requirement on the workforce.**

Instead, in the three incidents where language barriers were a concern, the CSB recommended that employers **provide training and information in language and formats understood by workers**.⁷ In other words, the CSB does not recommend limiting the pool of workers to only those who understand English, rather the CSB recommends expanding language access to increase worker safety.

Conclusion

Per the guidance of OSHA and CSB, if any language requirement should be included in this bill, it should be a requirement that training materials be available in all languages. The English language requirement in the bill currently does not serve to keep workers safe, but to limit the pool of workers by excluding anybody who speaks languages other than English. We encourage the committee to strike this language from the bill, as it does not serve the purported purpose.

Thank you for your time and consideration,



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⁷ Sierra Chemical Co. High Explosives Accident, U.S. Chemical Safety and Hazard Investigation Board, Jan. 7, 1998 (https://www.csb.gov/assets/1/20/csb_sierra.pdf?13774); Investigation Report: Vapor Cloud Deflagration and Fire, U.S. Chemical Safety and Hazard Investigation Board, Jan, 13, 2003 (https://www.csb.gov/assets/1/20/blsr_report.pdf?13780); Investigation Report: Chemical Waste-Mixing Incident, U.S. Chemical Safety and Hazard Investigation Board, April 25, 2002 (<https://www.csb.gov/file.aspx?DocumentId=5601>).