

HOUSE BILL REPORT

ESB 6769

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to shepherd housing.

Brief Description: Concerning shepherd housing.

Sponsors: Senators Honeyford, Prentice, Rasmussen and Hochstatter.

Brief History:

Committee Activity:

Commerce & Labor: 2/20/02, 2/28/02 [DP].

Brief Summary of Engrossed Bill

- Prohibits the Department of Labor and Industries from enforcing standards for range shepherd mobile housing that exceed applicable federal standards.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Clements, Ranking Minority Member; Chandler, Kenney, Lysen and McMorris.

Staff: Chris Cordes (786-7103).

Background:

Both Washington and federal safety and health rules for workplaces have provisions governing temporary worker housing or labor camps when the housing is provided as a condition of employment. In Washington, the rules applying to agriculture have been adopted jointly by the Department of Labor and Industries under the Washington Industrial Safety and Health Act and the Department of Health. Because Washington is a "state plan state" under the federal Occupational Safety and Health Act, only the state rules are enforced in most Washington workplaces.

According to a Department of Labor and Industries regional directive issued in November 2001, a small number of shepherders work in Washington under a federal temporary

foreign worker program administered by the Employment Security Department (ESD). This foreign worker program requires the employer to provide free and approved housing for workers who are not able to return to their residences daily. The ESD must certify to the U.S. Department of Labor that applicable health and safety standards are met for these workers.

Beginning in December 2000, certifying authorities began consulting with the Department of Labor and Industries. These discussions led to the issuance of the November 2001 regional directive that gives interpretive guidance for enforcing the state temporary worker housing standards when housing is provided to shepherders as a condition of employment. This directive discusses the circumstances under which "feasibility" and "de minimis" arguments should be evaluated and lists the standards for which citations may not be issued in certain circumstances. The directive also states that the department will not cite violations of the state requirements before May 1, 2002, if the requirement would not have been enforced under prior agreements relating to certification of the shepherd program.

Both state and federal temporary worker housing standards regulate such issues as: siting the housing or camps; shelter requirements; water supply; toilet, laundry, handwashing, and bathing facilities; lighting; sewage and refuse disposal; operation of kitchen facilities; insect and rodent control; first aid facilities; and disease prevention and reporting.

Summary of Bill:

The state workplace safety and health rules governing temporary worker housing do not apply, with respect to range shepherding mobile housing, to employers who are engaged in the business of shepherding.

The Department of Labor and Industries may not enforce workplace safety and health standards for range shepherd mobile housing that exceed the minimum applicable requirements in standards adopted by the U.S. Department of Labor.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Shepherd employees usually work alone in remote high country range land using specially built RV trailers or wagons. No one thought about shepherders when the rules for temporary worker housing were being developed. It is not feasible to comply with the usual housing standards except at the lambing camp. But

the Department of Labor and Industries has stated that "infeasibility" will not always be a defense under the state standards. On forest service land, the sheep must be moved every few days. The standards applying to housing that must be moved constantly has been worked out with the Department of Labor and Industries to be sure that safe standards would be used. There are about a dozen shepherders in the state, mostly from Chile and Peru. There are many workers waiting to get into the program. They earn a very good income to take home to help support their families. They recommend other family members to come when workers are replaced in the next year. Under the federal temporary worker program, the employer must guarantee that certain conditions will be met. The employer visits their remote camps every few days. The agricultural community would like to see more use of the foreign temporary worker program.

Testimony Against: The department reviewed the applicability of the state's temporary worker housing standards and came up with enforcement standards that make sense. The department got input from workers and employers before developing the enforcement directive, which responds to concerns with a lot of flexibility. This bill would lower the standards below the standards that one of the shepherd employer is now providing. The same basic rules should apply to all temporary workers. An exception should not be carved out for foreign temporary workers.

Testified: (In support) Senator Honeyford, prime sponsor; Chris Cheney, Washington Growers League; Carol Martinez; and Dan Fazio, Washington State Farm Bureau.

(Opposed) Jeff Johnson, Washington State Labor Council.