

HOUSE BILL REPORT

HB 2979

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to overtime compensation for agricultural employees.

Brief Description: Addressing overtime compensation for agricultural employees.

Sponsors: Representatives Williams, Conway, Moeller and Simpson.

Brief History:

Committee Activity:

Commerce & Labor: 1/24/08, 2/5/08 [DP].

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Requires overtime wages for certain agricultural work unless the employee is employed by the owner/operator.
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HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse.

Staff: Alison Hellberg (786-7152).

Background:

Under the state's Minimum Wage Act, employees who work longer than 40 hours in a seven-day work week must generally be paid at least 1.5 times the regular rate of pay. Many employees are exempt, including individuals employed in delivering to storage or to market, or to a carrier for transportation to market, any agricultural or horticultural commodity.

The Department of Labor and Industries (Department) issued a policy statement interpreting this provision as applying only to individuals who work for an employer who actually produces the products. In August 2006, however, the Washington Supreme Court (Court), in

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Cerrillo v. Esparza, held that the statute was not ambiguous and that truckers hauling agricultural commodities are exempt from the overtime requirements.

Summary of Bill:

The Minimum Wage Act overtime exemptions for individuals employed in the following activities is limited to individuals employed by the owner or operator with respect to agricultural or horticultural commodities produced by the owner or operator:

- packing, packaging, grading, storing, delivering to storage or to market, or delivering to a carrier for transportation to market;
- commercial canning, freezing, or other processing; or
- after delivery to a terminal market for distribution.

The exemption for individuals employed in connection with the cultivation, raising, harvesting, and processing of oysters is also limited to those employed by the owner or operator with respect to oysters produced by the owner or operator.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Thousands of workers have been adversely affected by the Court's ruling in *Cerrillo v. Esparza*. This bill carefully restores the 25-year policy that the Department previously had in place. *Cerrillo v. Esparza* was decided on a grammatical quirk even though the Legislature may have had different intentions. The bill clarifies legislative intent on overtime compensation for agricultural workers.

This bill does not go as far as some in the labor community would like. It restores the status quo and puts the state back in the role of enforcement. All enforcement of agricultural overtime laws has been left up to federal authorities since the case was decided.

Transportation arrangements between farmers and transporters are subject to a set fee. Whether the trucking company has to pay overtime or not does not affect the price a farmer pays.

The goal of the Department is to make sure that workers are paid wages and dues, and that employers understand the standards. The position of the Department was consistent with the federal law except in the case of hauling fruits and vegetables. That work would only be

exempt from overtime compensation if the hauler was employed by the owner or operator of the farm where the commodities were produced.

(Opposed) This bill creates an uneven playing field, favoring large vertically-integrated farms over small family farms. It would be much simpler to just align federal and state law, and create consistency.

There is much disagreement as to what is the status quo. This overtime exemption has always existed. The difference in the law and the position of the Department confused farmers for years. The policy contradicted the law. The decision in *Cerrillo v. Esparza* was not just about a grammatical error in the law. The Department adopted its position in error. The Department's letter is a disappointment because it mischaracterizes the Court's ruling.

Agricultural and horticultural commodities are perishable so it is necessary to work fast; this is not like manufacturing. The fragile condition of the product does not recognize who is transporting it. This is especially the case with raw fruits and vegetables; transportation of those commodities are exempted under federal law.

Washington products, particularly apples, are sold in a competitive market. Places with low labor costs like China and South America also produce apples. Increased labor costs make Washington apples less marketable and Washington farmers have not been profitable lately. Farmers take the risk and are the last to get paid. A cautionary tale is what happened to asparagus production in this state. All of the production has gone to Peru.

Persons Testifying: (In support) Representative Williams, prime sponsor; Owen Linch, Teamsters Joint Council 28; Jeff Johnson, Washington State Labor Council; and Patrick Woods, Department of Labor and Industries.

(Opposed) Dave Ducharme, Yakima Growers and Shippers; Dan Fazio, Washington Farm Bureau; Kris Tefft, Association of Washington Business; Ed Owens, Coalition of Coastal Fisheries; and Chris Cheney, Washington Growers League and Hop Growers of Washington.

Persons Signed In To Testify But Not Testifying: None.