
Commerce & Labor Committee

HB 1896

Brief Description: Creating the Washington state essential worker pilot program.

Sponsors: Representatives Chandler, Springer, Condotta, Pedersen, Newhouse, Haigh, Armstrong, Moeller and Kretz.

Brief Summary of Bill

- Requires the Employment Security Department to petition the United State Congress for creation of an essential worker visa classification, and to implement an essential worker pilot program.
- Defines an "essential worker" as an alien who is issued a nonimmigrant visa and admitted to the United States to perform seasonal, peak need, or project-related labor for one or more employers.

Hearing Date: 2/11/09

Staff: Jill Reinmuth (786-7134)

Background:

The federal Immigration and Nationality Act provides for various classifications of nonimmigrant visas. Classifications for temporary "guest workers" include the H-2A classification for seasonal agricultural workers, and the H-2B classification for seasonal nonagricultural workers. About 30,000 H-2A visas are allocated each year. The number of H-2B visas that may be issued is capped at 66,000 per year.

Employers who wish to hire H-2A or H-2B workers must apply for a labor certification from the United States Department of Labor. The labor certification advises the United States Citizenship and Immigration Services as to the availability of qualified United States workers and the effect of employing guest workers on the wages and working conditions of similarly employed United States workers. For both the H-2A and the H-2B programs, the state Employment Security Department helps recruit United States workers to meet employers' needs, if possible.

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.

Summary of Bill:

The Employment Security Department (Department) is required to petition the United States Congress (Congress) for creation of an essential worker visa classification, and to implement an essential worker pilot program.

Findings and Intent.

The Legislature finds that:

- Workers from other states and countries are attracted to work in Washington's agricultural, construction, retail, restaurant, and hospitality industries.
- There is a controversy over eligibility for government services because some workers may lack eligibility for employment.
- Federal laws and regulations require employers to view documents that establish identity and employment eligibility, and while the federal government encourages employers to verify identity, that is not feasible for many employers.

The Legislature intends to establish a program to provide an adequate, legal, and stable workforce for Washington employers, working within existing programs in the short term and advocating for changes in the long term.

Essential Worker Visa.

The Department must petition the Congress to create an essential worker visa classification. An "essential worker" is defined as an alien who is issued a nonimmigrant visa and admitted to the United States to perform seasonal, peak need, or project-related labor for one or more employees. The new classification would allow workers to be admitted to the United States for three years, and would be administered as a six-year pilot program.

State workforce agencies, such as the Department, may petition for admission of aliens as essential workers. Agencies that file petitions are required to administer essential worker programs that provide for recruitment and referral of local workers to employers, and if positions are not filled within three days by local workers, refer essential workers to employers.

Essential workers must submit appropriate documents and fees, obtain biometric identification cards, and complete criminal background checks. They must return to their native countries for at least 30 days per year. Those who do not perform labor for 45 consecutive days are unlawfully present in the United States and subject to deportation.

Essential Worker Pilot Program.

The Department must immediately begin work to implement the Washington State Essential Worker Pilot Program. The Department also must petition the federal government to allow Washington to offer the program until an essential worker visa is created.

An outreach effort to employers must be made. The purpose of this effort is to assess the numbers of seasonal, peak need, or project-related workers that are needed, and to recruit them to participate in the program.

Relationships must be established with representatives of foreign countries and states in foreign countries to facilitate recruitment and provision of essential workers.

Local workers must be referred to an employer who petitions for workers. If there are insufficient numbers, alien workers must be referred to the employer. The Department is required to attempt to refer essential workers to employers in the Columbia Basin, north central Washington, the Tri-Cities area, the Yakima Valley, and western Washington.

A best faith effort must be made to provide sufficient numbers of workers to certain employers. These employers are the ones that request workers after June 1, 2010. First priority is given to the ones who enroll in the program and pay program costs before April 1, 2010.

Training programs for essential workers, including basic English language and civic training, must be offered. In developing training programs, the Department must work with employers and employer associations who participate in the program.

The Department must report to the Legislature by December 1 of each year. The report must include the numbers of local and alien workers that were referred and hired, and the number of employers whose requests were not satisfied.

Employers are charged the actual cost of providing each essential worker, but not more than \$500 per worker. Employers must provide housing to essential workers while they are employed. If housing is provided, employers may deduct a reasonable amount from the worker's compensation, subject to federal requirements. Employers may also arrange rental housing.

The act expires November 13, 2013.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.