
**Labor & Workforce Development
Committee**

ESSB 6392

Brief Description: Establishing a farm internship program.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Kohl-Welles, Conway and Shin).

Brief Summary of Engrossed Substitute Bill

- Re-authorizes the farm internship pilot project until 2017, and allows participation by small farms in King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Kittitas, Lincoln, and Thurston counties, in addition to San Juan and Skagit counties.

Hearing Date: 2/17/12

Staff: Joan Elgee (786-7106).

Background:

A number of laws provide employment protections to workers. These laws include the Minimum Wage Act, the Industrial Insurance Act, the Employment Security Act, and the Industrial Welfare Act. While these acts define who is covered differently, generally a person who provides services to a for-profit business is covered by the acts. Exemptions apply to each Act. Referring to an individual as an intern or volunteer does not exempt the employer or the worker from the respective acts.

Minimum Wage Act (MWA). The MWA establishes a minimum wage which must be paid to all employees, unless exempt. Exempt employees include certain agricultural employees and volunteers for nonprofit organizations. In addition, the Director of the Department of Labor and Industries (L&I) may, to prevent curtailment of opportunities for employment, issue special certificates to employers allowing payment of wages lower than the minimum wage to learners.

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.

Industrial Insurance Act. Industrial insurance provides medical and time loss benefits to workers injured in the course of their employment. Industrial insurance coverage is mandatory unless an exemption applies, and employers that provide for coverage generally cannot be sued for damages when a worker suffers a work-related injury. Employers insure through the State Fund administered by L&I or, if qualified, may self-insure. State Fund premiums are calculated based on the industry risk classification and the employer's experience rating.

Employment Security Act. Under the Employment Security Act, qualified individuals who have lost their job through no fault of their own, or quit for good cause, are entitled to unemployment insurance benefits. Benefits are funded by contributions collected from employers. Exemptions include certain agricultural labor performed by students.

Industrial Welfare Act (IWA). The IWA regulates hours and conditions of labor and other wage issues not specifically covered by the MWA and other laws. The IWA applies to all employers and employees in the state unless specifically exempt. Agricultural employees are exempt from some provisions of the IWA.

Farm Internship Program. In 2010 the Legislature directed L&I to establish a farm internship pilot project, and to report back to the Legislature by December 31, 2011. Eligible farms were those located in Skagit or San Juan County with gross sales of under \$250,000. The Department was directed to issue a certificate if the farm met specified criteria:

- the farm had no serious violations of the MWA or the Industrial Insurance Act;
- the certificate would not create unfair competitive cost advantages or impair or depress wage or working standards for experienced farm workers;
- a farm intern would not displace an experienced worker; and
- the intern would perform work under an internship program designed to teach interns about farming practices and farm enterprises, based on the bona fide curriculum of an educational or vocational institution, and reasonably designed to give interns knowledge and skills about farming practices and enterprises.

A farm could employ no more than three interns per year.

Under the pilot project, farm interns providing services to a farm with a special certificate were not considered employees under the MWA. Similarly, agricultural labor provided by a farm intern was not considered employment for unemployment insurance purposes. L&I was directed to provide a special industrial insurance risk class for farm interns.

The Director of L&I could remove a certificate for a farm's failure to pay industrial insurance premiums for interns or non-interns, or a farm's failure to comply with the provisions of the IWA that apply to farm interns.

A farm and an intern were required to sign an agreement stating the intern is not entitled to minimum wage, describing the internship program, and other listed matters.

Six small farms were awarded a small farm intern certificate, and nine interns were employed under the certificates during the pilot project. The pilot project expired on December 31, 2011.

Summary of Bill:

The farm internship pilot project created in 2010 is re-authorized and expires on December 31, 2017. The following changes are made to the program:

- the counties eligible to participate in the pilot project are expanded to San Juan, Skagit, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Kittitas, Lincoln, and Thurston counties;
- a small farm may employ no more than three interns at one time (rather than per year);
- language is added to provide that the unemployment insurance exemption does not apply to government, non-profit organizations, and tribes; and
- the agreement between the farmer and intern must explicitly state that the intern is not entitled to unemployment benefits and the employer must describe the anticipated number of hours of curriculum instruction provided to the intern per week (in addition to the hours of farm activities).

L&I must submit a report to the Legislature by December 31, 2017, when the pilot project expires.

Funds for the farm internship program must be appropriated from the state General Fund.

Appropriation: None.

Fiscal Note: Requested on February 13, 2012.

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