

HOUSE BILL REPORT

SSB 5123

As Passed House:
March 7, 2014

Title: An act relating to a farm internship program.

Brief Description: Establishing a farm internship program.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ranker, Hatfield, Hobbs, Parlette and Conway).

Brief History:

Committee Activity:

Labor & Workforce Development: 3/20/13, 3/26/13 [DP], 2/26/14 [DP];

Appropriations Subcommittee on Health & Human Services: 4/4/13 [DP], 2/27/14 [DP].

Floor Activity:

Passed House: 3/7/14, 88-9.

Brief Summary of Substitute Bill

- Creates a farm internship pilot project similar to the 2010-2011 pilot project, and allows participation by small farms in Chelan, Grant, Island, Jefferson, King, Kitsap, Kittitas, Lincoln, Pierce, San Juan, Skagit, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: Do pass. Signed by 9 members: Representatives Sells, Chair; Reykdal, Vice Chair; Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Christian, Green, G. Hunt, Moeller and Ormsby.

Staff: Joan Elgee (786-7106).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: Do pass. Signed by 8 members: Representatives Morrell, Chair; Harris, Ranking Minority Member; Green, G. Hunt, Kagi, Ormsby, Ross and Tharinger.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Schmick.

Staff: Mary Mulholland (786-7391).

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 in different ways, 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.

The Minimum Wage Act (MWA) establishes a minimum wage which must be paid to all employees, unless they are 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 them to pay wages lower than the minimum wage to learners.

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 the 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 jobs through no fault of their own, or who 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.

The Industrial Welfare Act (IWA) regulates hours and conditions of labor and other employment 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 the 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 under \$250,000. Six small farms were awarded small farm intern certificates, 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 until December 31, 2017. The eligible counties are Chelan, Grant, Island, Jefferson, King, Kitsap, Kittitas, Lincoln, Pierce, San Juan, Skagit, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

A small farm may apply to the L&I for a special certificate authorizing farm interns. The L&I is directed to issue a special certificate if the farm meets specified criteria:

- the farm qualifies as a small farm (gross sales under \$250,000);
- the farm had no serious violations of the MWA or the Industrial Insurance Act;
- the issuance of a certificate would not create unfair competitive cost advantages or impair or depress wages 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.

This special certificate must specify its terms and conditions, including the duration of a certificate, the duration of an internship, the wage rate (if any), and any room, board, stipends, or other remuneration.

A farm may employ no more than three interns at a time.

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

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

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

In addition to the expanded number of counties, the reauthorized pilot project differs from the project created in 2010 in the following respects:

- 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, nonprofit organizations, and tribes;
- the agreement between the farmer and the intern must explicitly state that the intern is not entitled to unemployment benefits, and the agreement must describe the anticipated number of hours of curriculum instruction provided to the intern per week, in addition to the hours of farm activities;
- the L&I must limit the administrative costs of implementing the internship pilot program by relying on farm organizations and other stakeholders to perform outreach

- and inform the farm community of the program and by limiting employee travel to the investigation of allegations of noncompliance with program requirements; and
- a requirement that funds be appropriated from the State General Fund is not included.

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

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Labor & Workforce Development):

(In support) The farm internship program is awesome. It's exciting to see farm internships made legal.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations Subcommittee on Health & Human Services):

(In support) The bill has been around for a few years. The original pilot project from four years ago was extremely successful. Currently, there is no opportunity for young people to get into farming unless they are receiving formal university or college credit. The average age of a farmer in Washington is 57 years old. Many farms have interns but are being told the interns are not legal and need to be treated as employees. The bill would create a program to encourage young people to get into farming by creating an educational opportunity through an internship, which is different than employment.

(Opposed) None.

Persons Testifying (Labor & Workforce Development): Ariana Taylor-Stanley, Tilth Producers of Washington.

Persons Testifying (Appropriations Subcommittee on Health & Human Services): Senator Ranker, Prime Sponsor.

Persons Signed In To Testify But Not Testifying (Labor & Workforce Development): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on Health & Human Services): None.