

HOUSE BILL REPORT

SSB 5123

As Reported by House Committee On:
Labor & Workforce Development
Appropriations Subcommittee on Health & Human Services

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];

Appropriations Subcommittee on Health & Human Services: 4/4/13 [DP].

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 8 members: Representatives Sells, Chair; Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Green, Holy, Moeller, Ormsby and Short.

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 in different ways, generally a person who provides services to a for-profit business is covered by the acts. Exemptions

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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 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 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 was 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:

(In support) The pilot project should be reestablished and offered in other regions in the state. The average age of a farmer is 57 and going up. Seventy percent of farm land will change hands over the next 20 years. Internships provide high quality training and will help young people find careers in agriculture. About one-quarter of the young people one farmer trained went on to become farmers. As a farm intern, one person became thoroughly prepared to start her own farm. Internships need to be safe, legal, and effective. The pilot is set up well, without loopholes, and will eliminate the risks of working under the table. Other states are looking at Washington, which is forward-thinking. With interns, there is more time to take advantage of learning opportunities, which is not possible when paying someone \$10 to \$12 an hour. A farmer who participated in the earlier pilot would do so again. New resources are going into curriculum development for farm interns. Farm internships ranked high in a survey of a farm organization regarding policy issues.

(Opposed) None.

Persons Testifying: Addie Candib, Washington Young Farmers Coalition; Ethan Schaffer, Viva Farms; and Ariana Taylor-Stanley, Tilth Producers of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: Do pass. Signed by 6 members: Representatives Morrell, Chair; Cody, Green, Jinkins, Kagi and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Harris, Ranking Minority Member; Pike, Ross and Schmick.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Subcommittee on Health & Human Services Compared to Recommendation of Committee On Labor & Workforce Development:

No new changes were recommended.

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:

(In support) None.

(Opposed) Workers' compensation premium dollars should not be diverted to fund the farm internship program. The program does not have anything to do with workers' compensation and it is specific to farm employers, so it is incongruous that businesses and their employees in all industries would pay to fund it. The original bill in the Senate required the program to be funded with state general funds which is consistent with how the bill for the original pilot program was done.

This is a good program, but dollars that employers and employees pay in trust to be used to compensate injured workers in need should not be the fund source for this program. Diversions from workers' compensation funds are a growing problem. Data provided by the Department of Labor and Industries (L&I) shows that \$42.5 million is already coming out of those trust funds thereby decreasing the amount left in the Accident Reserve Account (Account) and creating a risk that the L&I may assess \$1.1 billion to employers over the next 10 years to rebuild the fund. Funding the farm internship program through this Account would continue a bad practice.

Other industries that support alternative training programs pay for their own training through a variety of different methods. The industry that receives the benefit should pay for the benefit.

Persons Testifying: Kris Tefft, Association of Washington Business; Patrick Connor, National Federation of Independent Business; and Van Collins, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.