

E2SSB 5438 - H COMM AMD
By Committee on Appropriations

ADOPTED 04/11/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the
4 agricultural industry in the state of Washington employs more than
5 one hundred thousand workers per year and brings more than seven
6 billion dollars of economic activity to our state. This industry and
7 its workers are a vital part of Washington's role in the global
8 economy. The legislature further finds the number of the H-2A
9 temporary agricultural workers coming into the state of Washington to
10 harvest crops has grown by more than one thousand percent since 2007
11 and the funding provided by the federal government is insufficient to
12 adequately ensure the protection of workers and growers. The
13 legislature also finds the need to ensure this growth does not have
14 an adverse impact on the domestic agricultural labor force.

15 The legislature declares it to be in the public interest to
16 clarify the state's role in the H-2A temporary agricultural program
17 to provide adequate protections for foreign and domestic workers and
18 provide education and outreach opportunities to help growers maintain
19 the stable workforce they need.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires
22 otherwise.

23 (1) "Commissioner" means the commissioner of the employment
24 security department.

25 (2) "Department" means the employment security department.

26 (3) "Employer" has the same meaning as in 20 C.F.R. Sec. 655.103.
27 "Employer" also includes a "fixed-site employer," as defined in 20
28 C.F.R. Sec. 655.103, and an employer in a "joint employment"
29 relationship, as defined in 20 C.F.R. Sec. 655.103.

30 (4) "Field check" means an unannounced inspection and audit of an
31 employer to determine and document whether the employer is providing

1 wages, hours, and working and housing conditions as specified in the
2 employer's approved H-2A application, as required by the United
3 States department of labor.

4 (5) "Field visit" means a scheduled visit to an employer's
5 premises where H-2A workers work, live, and gather to discuss
6 employment services and other employment-related programs with
7 workers, as required by the United States department of labor.

8 (6) "H-2A application" means an agricultural food processing
9 clearance order form ETA 790 that describes the material terms and
10 conditions of employment and is submitted in connection with a future
11 application for temporary employment certification for H-2A workers
12 to the United States department of labor under 20 C.F.R. Part 655, as
13 amended.

14 (7) "H-2A worker" means any temporary foreign worker who is
15 lawfully present in the United States to perform agricultural labor
16 or services of a temporary or seasonal nature pursuant to Title 8
17 U.S.C. Sec. 1101(a)(15)(H)(ii)(a) of the immigration and nationality
18 act, as amended.

19 (8) "Office" means the office of agricultural and seasonal
20 workforce services established in section 3 of this act.

21 NEW SECTION. **Sec. 3.** (1) The office of agricultural and
22 seasonal workforce services is established within the department.

23 (2) The duties of the office are:

24 (a) Processing and adjudicating foreign labor certification
25 applications from employers;

26 (b) Processing complaints consistent with 20 C.F.R. Part 658,
27 Subpart E;

28 (c) Conducting field checks and field visits, as required by the
29 United States department of labor. When conducting a field check, the
30 office shall coordinate, to the extent possible, with the department
31 of labor and industries, department of health, and department of
32 agriculture in order to limit disruption to agricultural employers
33 and efficiently use government resources;

34 (d) Administering the discontinuation and reinstatement of
35 services process pursuant to 20 C.F.R. Part 658, Subpart F; and

36 (e) Conducting training and outreach activities to employers who
37 are using agricultural and seasonal workforce services and programs
38 within the employment security department.

1 NEW SECTION. **Sec. 4.** (1) An employer must submit an H-2A
2 application in the manner and on a form prescribed by the department.
3 The H-2A application is not subject to chapter 50.13 RCW.

4 (2) The department may not process an H-2A application if the:

5 (a) Employer refuses to agree to be subject to field checks and
6 field visits; or

7 (b) Department discontinued services to the employer pursuant to
8 20 C.F.R. Part 658, Subpart F and that discontinuation remains in
9 effect.

10 NEW SECTION. **Sec. 5.** (1) The commissioner shall appoint an
11 advisory committee to review issues and topics of interest related to
12 this chapter.

13 (2) (a) The committee is composed of eight voting members:

14 (i) Four voting members representing agricultural workers'
15 interests: One of whom shall be a farmworker; and all of whom shall
16 be appointed from a list of at least four names submitted by a
17 recognized statewide organization of workers;

18 (ii) Four voting members representing agricultural employers: One
19 of whom shall be an agricultural employer; and all of whom shall be
20 appointed from a list of at least four names submitted by a
21 recognized statewide organization of agricultural employers; and

22 (iii) One ex officio member, without a vote, shall represent the
23 department and serve as the chair.

24 (b) The department of labor and industries, department of health,
25 and department of agriculture shall each have one nonvoting ex
26 officio member serve on the advisory committee.

27 (3) On issues and topics of interest related to this chapter, the
28 committee shall provide comment on department rule making, policies,
29 implementation of this chapter, and initiatives, and study issues the
30 committee determines require consideration.

31 (4) In even years, the committee shall submit a report to the
32 governor and the legislature by October 31st that:

33 (a) Identifies and recommends approaches to increase the
34 effectiveness of the employment security department's recruitment
35 process as part of the H-2A application. If deemed advisable by the
36 committee, the report may include recommended changes to state law
37 that would lead to increased recruitment and hiring of domestic
38 workers in agricultural employment in Washington; and

1 (b) Analyzes the costs incurred by the office to administer the
2 H-2A program, the funds to administer other department programs for
3 farmworkers, and the amount of funds allocated by the federal
4 government to administer the H-2A program and all other agricultural
5 programs within the department.

6 (5) The committee members shall serve without compensation, but
7 are entitled to reimbursement for travel expenses as provided in RCW
8 43.03.050 and 43.03.060. The committee may utilize department
9 personnel and facilities as it needs, without charge.

10 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
11 conflict with federal requirements that are a prescribed condition to
12 the allocation of federal funds to the state or the eligibility of
13 employers in this state for federal unemployment tax credits, the
14 conflicting part of this act is inoperative solely to the extent of
15 the conflict, and the finding or determination does not affect the
16 operation of the remainder of this act. Rules adopted under this act
17 must meet federal requirements that are a necessary condition to the
18 receipt of federal funds by the state or the granting of federal
19 unemployment tax credits to employers in this state.

20 NEW SECTION. **Sec. 7.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
25 constitute a new chapter in Title 50 RCW."

26 Correct the title.

EFFECT: Provides that the duties of the Office of Agricultural
and Seasonal Workforce Services (Office) "are" rather than "include"
those listed in the bill.

Strikes the provision that the Employment Security Department
will adopt fees if federal funds are not sufficient and all other
references to fees.

Strikes the provision that the Office will be funded by an
appropriation and the H-2A enforcement account.

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