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## Labor & Workplace Standards Committee

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### HB 1398

**Brief Description:** Concerning the H-2A temporary agricultural program.

**Sponsors:** Representatives Dolan, Sells, Doglio, Ormsby, Valdez, Gregerson, Appleton and Frame; by request of Employment Security Department.

#### Brief Summary of Bill

- Creates an Office of H-2A Compliance and Farm Labor within the Employment Security Department to conduct the field checks and visits and conduct training and outreach to employers using the H-2A program.
- Requires a fee, to be set by rule, for each H-2A application an employer submits and for each H-2A worker an employer requests.
- Creates an H-2A temporary agricultural program advisory committee.

**Hearing Date:** 1/22/19

**Staff:** Joan Elgee (786-7106).

#### Background:

The federal Immigration and Nationality Act provides for various classifications of non-immigrant visas. Classifications for temporary "guest workers" include the H-2A classification for seasonal agricultural workers. The H-2A program allows agricultural employers to bring in foreign workers temporarily when there are insufficient qualified United States (U.S.) workers. Employers using H-2A workers must pay specified rates of pay, provide the workers housing and transportation, guarantee employment for a specified period of time, and meet other requirements.

A prospective employer of H-2A workers submits a U.S. Department of Labor form ETA 790 to the Employment Security Department (Department) and upon approval, the Department initiates

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recruitment of domestic workers. The employer also submits an application to the U.S. Department of Labor, which certifies the employment of H-2A workers. The Department also conducts surveys to help establish pay rates, and conduct field checks to review wages, hours, and other working conditions. The state departments of Health and Labor and Industries have regulatory responsibility over temporary farmworker housing.

The Department predicts more than 30,000 H-2A workers will be requested to work in Washington during 2019. The Department receives an average annual funding level of about \$300,000 from the U.S. Department of Labor.

### **Summary of Bill:**

#### Office of H-2A Compliance and Farm Labor.

An Office of H-2A Compliance and Farm Labor (Office) is established within the Department. The Office must:

- conduct field checks and field visits. A field check is an unannounced inspection and audit to determine whether the employer is providing wages, hours, and working and housing conditions as specified in the approved H-2A application. A field visit is a scheduled visit to where workers work, live, and gather to discuss employment services and employment-related programs. The Department must coordinate with the departments of Labor and Industries, Health, and Agriculture to the extent feasible; and
- conduct training and outreach activities to employers using the H-2A program to help increase awareness of the law and increase compliance.

#### Fees.

Employers must pay a fee for each H-2A application and a fee for each worker, which the Department must set by rule. The Department must adjust the fees based on the costs to administer the H-2A program and the funds allocated by the federal government. Fees may not be set that are expected to result in revenues greater than the difference between the federal funds allocated and the costs to administer the program. The fee structure must include:

- varied worker fees to show consideration for economics of scale for larger requests;
- discounted rates for employers who have a track record of compliance; and
- other factors as determined by the Department.

The rule-making hearing for fees for 2020 must be held in September 2019. Fees must be adjusted annually by October 31 of each year, and the rule must stay in effect the next calendar year. The Department may not process an H-2A application unless the fee is paid and the employer agrees to be subject to field checks and visits or if the Department discontinued employment services to the employer under certain federal standards.

#### Advisory Committee.

The commissioner of the Department must appoint an advisory committee to provide comment on rule-making, policies, implementation of the provisions, and initiatives, and study issues the committee determines require consideration. The committee is composed of four members representing agricultural workers' interests and four members representing agricultural employers. A representative of the Department is a non-voting member and serves as chair.

The committee must submit a report to the Governor and the Legislature by October 31, 2021, that identifies and recommends approaches to increase the recruitment and hiring of domestic agricultural workers. The report also may include recommended legislative changes that would lead to increased recruitment and hiring of domestic agricultural workers.

Other.

An H-2A enforcement account is created. Expenditures may be used only for the purposes in the bill and for surveying employers and workers regarding wages and practices.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2019.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 4, 5, and 7, relating to the processing of the application, the fees, and the account, which takes effect January 1, 2020.