

HOUSE BILL REPORT

SHB 2226

As Amended by the Senate

Title: An act relating to collecting data on the H-2A worker program and from certain hand harvesters.

Brief Description: Concerning collecting data on the H-2A worker program and from certain hand harvesters.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Ortiz-Self, Berry, Gregerson, Ramel, Santos, Reeves, Reed and Davis).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/17/24, 1/26/24 [DPS].

Floor Activity:

Passed House: 2/7/24, 54-42.

Senate Amended.

Passed Senate: 2/28/24, 27-22.

Brief Summary of Substitute Bill

- Requires the Employment Security Department (ESD) to collect certain data pertaining to H-2A workers when conducting field checks and field visits.
- Requires the ESD to conduct annual wage surveys of workers hand harvesting apples, cherries, pears, and blueberries.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Rude and Ybarra.

Staff: Trudes Tango (786-7384).

Background:

H-2A Temporary Agricultural Worker Visa Program.

The federal H-2A program allows agricultural employers to hire foreign workers on temporary guest worker visas when there are insufficient qualified domestic farmworkers available, and the use of H-2A workers would not have a negative effect on the wages or working conditions of domestic farmworkers. Although the United States Department of Labor (US DOL) establishes the rules for the federal program, the state Employment Security Department (ESD) is charged with administering certain aspects of the program.

Employers seeking to use the H-2A program must first submit a job order to the ESD. The job order includes the number of workers requested and other information, such as the wages the employer will pay. The ESD confirms that the job order meets federal requirements and notifies the US DOL. The ESD also engages in recruitment efforts to find domestic farmworkers, using the state's WorkSource offices. The ESD refers domestic applicants to the employer, and the employer is required to hire all qualified, able, willing, and available domestic farmworkers. Employers also engage in direct recruitment of domestic farmworkers as well.

The employer then submits an application to the US DOL for certification to use temporary guest workers. The application may be submitted by a single employer or a group of employers that will jointly employ the workers. The US DOL must determine that there are not enough domestic farmworkers to fill the employer's positions. The US DOL then certifies the employment of H-2A workers. Employers using H-2A workers must pay specified rates of pay, provide the workers housing and transportation, and meet other requirements. The US DOL establishes what the prevailing wage rate for H-2A workers should be. The ESD conducts wage surveys of employers and some farmworkers, subject to federal H-2A regulations. Participation in the surveys are voluntary.

The ESD also conducts field visits, which are scheduled in advance, to help employers and H-2A farmworkers understand their rights and responsibilities, and to observe working and living conditions. The ESD also conducts field checks, which are random and unannounced, to ensure compliance with H-2A requirements.

Summary of Substitute Bill:

Data on H-2A Workers.

Whenever the ESD conducts field checks or field visits of an employer, the ESD must collect the following information:

- the number of H-2A workers the employer has at each work site; and
- the actual geographic location of where the H-2A workers are living during their employment with the employer.

The ESD must compile the information and compare the number of workers sought by an employer on the employer's H-2A application with the number of H-2A workers actually working for the employer. The ESD must make the information available to the Office of Agricultural and Seasonal Workforce Services' (ASWS) Advisory Committee on a quarterly basis

Surveys of Hand Harvesters.

The ESD must conduct a comprehensive annual wage survey of workers hand harvesting apples, cherries, pears, and blueberries. At a minimum, the survey must:

- gather information on wage rates received for harvesting activities;
- gather information on the respondent's age, gender, and whether the respondent was born in the United States or the number of years the respondent has been living in the United States; and
- include a question concerning whether the respondent made an unemployment insurance claim during the survey period.

The ESD must conduct a phone survey designed to receive responses from a minimum of 850 total fruit harvesters. Beginning in fiscal year 2025, the ASWS must include field surveys designed to receive responses from a minimum of:

- 1,200 apple harvesters;
- 200 pear harvesters;
- 200 blueberry harvesters; and
- 350 cherry harvesters.

The ESD must provide \$25 incentive payments for survey respondents eligible to respond to the survey.

The ESD must submit a report to the appropriate committees of the Legislature every year by May 1. The report must include information about the number of responses and individual responses, without names, by age, gender, United States birth or number of years in the United States; and whether the respondent filed an unemployment insurance claim.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- provides that the Employment Security Department (ESD), rather than the Office of Agricultural and Seasonal Workforce Services, must make information from field checks and field visits available to the advisory committee;
- specifies that the annual wage surveys must be of hand harvesters who are not H-2A workers;

- amends the wage survey question for unemployment claims (UI) to claims in the same period of time used to compile any list of UI claimants used as a basis for the phone survey;
- requires the survey to gather information on whether the respondent earned the reported wages while working on a farm that employed H-2A workers to do the same kind of work;
- removes the date (which was “beginning fiscal year 2025”) by which the ESD must use field surveys to gather information, and allows, rather than mandates, the use of a phone survey;
- changes the minimum number of responses that the survey must be designed to receive, from 850 total fruit harvesters to 2,800 workers;
- requires the use of best practices for administering field surveys of unknown populations; and
- provides that the UI claims data that is included in the ESD annual report of survey responses may be aggregated to the extent necessary to comply with federal law.

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) This bill will increase the information we get on H-2A workers to see if there is consistency between what is being requested in H-2A applications and the number of workers being brought in. Bringing in workers can impact the wages that domestic workers receive. There needs to be accurate information. The ESD conducts wage surveys of employers and employees, but the surveys of employees have been cut back. The ESD considers only the surveys from employers. These are not accurate. More data will help protect real wages that workers are making. The H-2A program is not supposed to drive down local wages, but that is what is happening.

(Opposed) This bill is costly and duplicative of work that is already being done. It micromanages the ESD's economic research and methodology. This data already exists. The ESD can already ask these questions when they do site visits. Adding additional questions to the surveys will increase the cost and will not have much impact. If there are design problems with the current surveys, those should be fixed within the ESD.

Persons Testifying: (In support) Representative Lillian Ortiz-Self, prime sponsor; Nina Martinez, Latino Civic Alliance; Andrea Schmitt, Columbia Legal Services; Rosalinda Guillen, Community to Community Development Projects; and Edgar Franks, Familias Unidas por la Justicia.

(Opposed) Scott Dilley, Wafla; and Nora Palattao Burnes, Washington Growers League.

Persons Signed In To Testify But Not Testifying: None.