

HOUSE BILL REPORT

HB 1920

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to overtime compensation for truckers transporting agricultural commodities.

Brief Description: Addressing overtime compensation for truckers transporting agricultural commodities.

Sponsors: Representatives Conway and Wood.

Brief History:

Committee Activity:

Commerce & Labor: 2/20/07, 2/27/07 [DPS].

Brief Summary of Substitute Bill

- Requires overtime wages for certain agricultural work unless the employee is employed by the owner/operator.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Crouse.

Staff: Joan Elgee (786-7106).

Background:

Under the state Minimum Wage Act, generally employees who work longer than 40 hours in a work week must be paid at least one and one-half times the regular rate. A number of employees are exempt, including individuals employed in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity.

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.

The Department of Labor and Industries issued a policy statement interpreting this provision as applying only to individuals who work for an employer who actually produces the products. In August 2006, however, the Washington Supreme Court, in *Cerillo v. Esparza*, held that the statute was not ambiguous and that truckers hauling agricultural commodities are exempt from the overtime requirements.

Summary of Substitute Bill:

The Minimum Wage Act overtime exemption for individuals employed in the following activities is limited to persons employed by the owner or operator with respect to agricultural or horticultural commodities produced by the owner or operator: (1) packing, packaging, grading, storing or delivery to storage, or to market or to a carrier for transportation to market; (2) commercial canning, freezing or other processing; or (3) after delivery to a terminal market for distribution. The exemption for individuals employed in connection with the cultivation, raising, harvesting, and processing of oysters is also limited to those employed by the owner or operator with respect to oysters produced by the owner or operator.

Substitute Bill Compared to Original Bill:

The substitute provides that for the cultivation, raising, harvesting, and processing of oysters and in connection with commodities after delivery to a terminal market, the exemption is also limited to those employed by the owner or operator of a farm.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill restores the overtime exemption understanding that had been in place for 25 years. We just want to restore the practice that we had. It continues to protect farmers and growers because if you work for an owner/operator you are exempt. It provides for the state rather than federal enforcement of the packing, grading, and storage provisions. We had five attorneys coming up with the language. If the exemption is not limited to the owner/operator, there's an administrative problem of where is the line.

(Opposed) The committee is being asked to overturn a Supreme Court decision. This is a complex and contentious area. We have a process through the Department of Labor and Industries' Employment Law Advisory Committee and the stakeholders should have a chance to work this out and come up with a consensus bill. Last year there was a case that turned out not to be an issue after all. It could be the same for this issue.

Some were not advised of the prior practice. The bill penalizes farmers who can't afford to have their own trucks; it's not fair to make this distinction. It's nearly impossible during the extraordinary activity at harvest to keep track of all the hours. The purpose of the exemption is to protect the valuable agricultural industry. The margins are razor thin.

Persons Testifying: (In support) Jeff Johnson, Washington State Labor Council; Owen Linch, Joint Council of Teamsters; and Patrick Woods, Department of Labor and Industries.

(Opposed) Dan Fazio, Washington Farm Bureau; and Dave Ducharme, Yakima Valley Growers-Shippers Association.

Persons Signed In To Testify But Not Testifying: None.