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SENATE BILL 5831

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State of Washington

61st Legislature

2009 Regular Session

By Senators Parlette, Haugen, Schoesler, Morton, and Hatfield

Read first time 02/03/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to the Washington state essential worker pilot  
2 program; adding a new chapter to Title 50 RCW; providing an expiration  
3 date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Washington's combination of excellent wages, working  
7 conditions, and services have attracted workers from other states and  
8 countries to work in our agricultural, construction, retail,  
9 restaurant, and hospitality industries. Many of these workers are  
10 employed for a particular season, peak need, or project.

11 (2) There exists a controversy because some of these workers may  
12 lack employment eligibility. Studies estimate that approximately two  
13 hundred thousand workers currently working within our state possess  
14 fraudulent identity and employment eligibility documents.

15 (3) This issue has caused considerable controversy over eligibility  
16 for government services including, but not limited to, employment-  
17 related services such as unemployment insurance and workers'  
18 compensation coverage.

1 (4) Federal laws and regulations require employers to view  
2 documents that establish identity and employment eligibility after they  
3 hire a worker, but the employer must accept the documents if they  
4 appear genuine. The federal government is encouraging employers to  
5 conduct background investigations or use other systems to verify the  
6 identity of workers after hiring them, but these steps are not required  
7 by federal law, take several weeks to accomplish, and are not feasible  
8 for many employers, especially employers who hire workers for a  
9 particular season, peak need, or project.

10 NEW SECTION. **Sec. 2.** The legislature intends that our state work  
11 proactively with the federal government to establish a program to  
12 provide an adequate, legal, and stable workforce for employers in  
13 Washington, working within existing programs in the short term and  
14 advocating for necessary changes at the federal level in the long term.

15 NEW SECTION. **Sec. 3.** The definitions in this section apply  
16 throughout sections 2 through 7 of this act unless the context clearly  
17 requires otherwise.

18 (1) "Department" means the employment security department.

19 (2) "Employer" means an employer in the agriculture, construction,  
20 retail, restaurant, or hospitality industry.

21 (3) "Essential worker" means an alien who is issued a nonimmigrant  
22 visa and admitted to the United States to perform seasonal, peak need,  
23 or project-related labor for one or more employers.

24 NEW SECTION. **Sec. 4.** (1) On behalf of the state, the department  
25 shall petition the United States congress to create a new  
26 classification of nonimmigrant visa.

27 (2) Aliens in the new classification shall be deemed essential  
28 workers and admitted to the United States for three years to perform  
29 labor for one or more employers. The new classification shall be  
30 administered as a pilot program, which expires six years from its  
31 effective date unless renewed by the United States congress.

32 (3) State workforce agencies are authorized to petition for  
33 admission of aliens to the United States as essential workers.  
34 Agencies that file petitions are required to administer essential  
35 worker programs. Programs must include systems for recruitment and

1 referral of local workers, and if available positions are not filled  
2 within three days by local workers, referral of essential workers to  
3 employers.

4 (4) Aliens seeking admission to the United States as essential  
5 workers are required to submit appropriate documentation and fees,  
6 obtain valid machine-readable biometric identification cards from  
7 appropriate consular officers, and successfully complete criminal  
8 background checks. Essential workers are required to return to their  
9 native countries for at least thirty consecutive days in each calendar  
10 year. Essential workers who, at any time during the three-year period,  
11 do not perform labor for forty-five consecutive days are considered  
12 unlawfully present in the United States and subject to deportation.

13 NEW SECTION. **Sec. 5.** (1) The Washington state essential worker  
14 pilot program is hereby established. As of the effective date of this  
15 section, the department shall immediately begin work to establish the  
16 parameters of the program in accordance with this section, and to  
17 implement the program. On behalf of the state, the department also  
18 shall petition the federal government to allow Washington to offer this  
19 program until changes in federal law specified in section 4(2) of this  
20 act are accomplished.

21 (2) The department shall:

22 (a) Begin an outreach effort to employers to assess the numbers of  
23 seasonal, peak need, or project-related workers that are needed, and to  
24 recruit them to participate in the program;

25 (b) Petition the federal government for the necessary waivers or  
26 exemptions to obtain guest worker visas using existing programs;

27 (c) Establish relationships and meet with representatives of  
28 foreign countries and states in foreign countries to facilitate  
29 recruitment and provision of essential workers;

30 (d) Petition for admission of sufficient alien workers to meet the  
31 need projected after outreach to employers;

32 (e) Utilizing the current state workforce recruiting systems, refer  
33 local workers to an employer who petitions for these workers, and if  
34 there are insufficient numbers of local workers, refer alien workers to  
35 such an employer;

36 (f) Make a best faith effort to provide sufficient numbers of  
37 workers to employers who request workers after June 1, 2010. The

1 department shall give first priority to employers who enroll in the  
2 program and pay program costs as specified in section 6 of this act  
3 before April 1, 2010;

4 (g) Report to the legislature by December 1st of each year on the  
5 number of local workers and alien workers that were referred and hired,  
6 and on the number of employers who requested workers but whose requests  
7 were not satisfied; and

8 (h) Attempt, to as great a degree as possible, to refer essential  
9 workers to employers in the following regions: The Columbia basin,  
10 north central Washington, the tri-cities area, the Yakima valley, and  
11 western Washington.

12 (3) Employers shall provide housing to essential workers while they  
13 are employed. Employers may arrange rental housing or deduct a  
14 reasonable amount from the compensation of the worker if housing is  
15 provided, subject to federal requirements for different industry  
16 nonimmigrant visa programs.

17 NEW SECTION. **Sec. 6.** The department shall determine the cost to  
18 provide each essential worker. The department shall charge employers  
19 who participate in the Washington state essential worker pilot program  
20 the actual cost of the program, not to exceed five hundred dollars per  
21 worker.

22 NEW SECTION. **Sec. 7.** The department shall offer training programs  
23 for essential workers, with a goal of making these workers better able  
24 to integrate themselves into the workforce, including but not limited  
25 to basic English language and civics training. The department shall  
26 work with employers and associations of employers who participate in  
27 the program to develop needed training programs.

28 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
29 a new chapter in Title 50 RCW.

30 NEW SECTION. **Sec. 9.** This act expires December 1, 2013.

31 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

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