

HOUSE BILL REPORT

ESSB 6392

As Reported by House Committee On:
Labor & Workforce Development
Health & Human Services Appropriations & Oversight

Title: An act relating to a farm internship program.

Brief Description: Establishing a farm internship program.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Kohl-Welles, Conway and Shin).

Brief History:

Committee Activity:

Labor & Workforce Development: 2/17/12, 2/21/12 [DPA];

Health & Human Services Appropriations & Oversight: 2/22/12 [DPA(APPH w/o LWD)].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Re-authorizes the farm internship pilot project until 2017, and allows participation by small farms in King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Kittitas, Lincoln, Okanogan, and Thurston counties, in addition to San Juan and Skagit counties.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: Do pass as amended. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Kenney, Miloscia, Moeller, Ormsby, Roberts and Warnick.

Minority Report: Do not pass. Signed by 4 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Green and Taylor.

Staff: Joan Elgee (786-7106).

Background:

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.

A number of laws provide employment protections to workers. These laws include the Minimum Wage Act, the Industrial Insurance Act, the Employment Security Act, and the Industrial Welfare Act. While these acts define who is covered differently, generally a person who provides services to a for-profit business is covered by the acts. Exemptions apply to each act. Referring to an individual as an intern or volunteer does not exempt the employer or the worker from the respective acts.

Minimum Wage Act. The Minimum Wage Act (MWA) establishes a minimum wage which must be paid to all employees, unless exempt. Exempt employees include certain agricultural employees and volunteers for nonprofit organizations. In addition, the Director of the Department of Labor and Industries (L&I) may, to prevent curtailment of opportunities for employment, issue special certificates to employers allowing payment of wages lower than the minimum wage to learners.

Industrial Insurance Act. Industrial insurance provides medical and time loss benefits to workers injured in the course of their employment. Industrial insurance coverage is mandatory unless an exemption applies, and employers that provide for coverage generally cannot be sued for damages when a worker suffers a work-related injury. Employers insure through the State Fund administered by the L&I or, if qualified, may self-insure. State Fund premiums are calculated based on the industry risk classification and the employer's experience rating.

Employment Security Act. Under the Employment Security Act, qualified individuals who have lost their job through no fault of their own, or quit for good cause, are entitled to unemployment insurance benefits. Benefits are funded by contributions collected from employers. Exemptions include certain agricultural labor performed by students.

Industrial Welfare Act. The Industrial Welfare Act (IWA) regulates hours and conditions of labor and other wage issues not specifically covered by the MWA and other laws. The IWA applies to all employers and employees in the state unless specifically exempt. Agricultural employees are exempt from some provisions of the IWA.

Farm Internship Program. In 2010 the Legislature directed the L&I to establish a farm internship pilot project, and to report back to the Legislature by December 31, 2011. Eligible farms were those located in Skagit or San Juan County with gross sales under \$250,000. The L&I was directed to issue a special certificate if the farm met specified criteria:

- the farm had no serious violations of the MWA or the Industrial Insurance Act;
- the issuance of a certificate would not create unfair competitive cost advantages or impair or depress wage or working standards for experienced farm workers;
- a farm intern would not displace an experienced worker; and
- the intern would perform work under an internship program designed to teach interns about farming practices and farm enterprises, based on the bona fide curriculum of an educational or vocational institution, and reasonably designed to give interns knowledge and skills about farming practices and enterprises.

A farm could employ no more than three interns per year.

Under the pilot project, farm interns providing services to a farm with a special certificate were not employees under the MWA. Similarly, agricultural labor provided by a farm intern was not employment for unemployment insurance purposes. The L&I was directed to provide a special industrial insurance risk class for farm interns.

The Director of the L&I could revoke a certificate for a farm's failure to pay industrial insurance premiums for interns or non-interns, or failure to comply with the provisions of the IWA that apply to farm interns.

A farm and an intern were required to sign an agreement stating the intern is not entitled to minimum wage, describing the internship program, and other listed matters.

Six small farms were awarded small farm intern certificates, and nine interns were employed under the certificates during the pilot project. The pilot project expired on December 31, 2011.

Summary of Amended Bill:

The farm internship pilot project created in 2010 is re-authorized and expires on December 31, 2017. The following changes are made to the program:

- the counties eligible to participate in the pilot project are expanded to San Juan, Skagit, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Kittitas, Lincoln, Okanogan, and Thurston counties;
- a small farm may employ no more than three interns at one time (rather than per year);
- language is added to provide that the unemployment insurance exemption does not apply to government, nonprofit organizations, and tribes; and
- the agreement between the farmer and intern must explicitly state that the intern is not entitled to unemployment benefits and the agreement must describe the anticipated number of hours of curriculum instruction provided to the intern per week (in addition to the hours of farm activities).

The L&I must submit a report to the Legislature by December 31, 2017, when the pilot project expires.

Funds for the farm internship program must be appropriated from the State General Fund.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill adds Okanogan County, and moves the requirement that appropriations for the purposes of the act be from the General Fund from a separate section into the section establishing the pilot project.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2012.

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

Staff Summary of Public Testimony:

(In support) Internships were essential for a grower to gain skills and to build relationships with other farmers. Most growers in an organization got their start as interns. This bill supports future generations of farmers; a farmer who started as an intern would like to now have interns. Internships provide a foot in the door to farming and help both the farmer and the intern. The bill will help facilitate the diversity of agriculture in the state. There needs to be some system of workers' compensation for interns. The preference is to fund the program out of the General Fund.

(With concerns) The program is supported but there are concerns about workers' compensation fund diversion. Over \$48 million is diverted from workers and employers each year and accounted for 40 percent of the rate increase in 2010. Make the requirement that the program be paid for from the General Fund not subject to veto by the Governor.

(Other) This is a great program. The one concern is the potential use of workers' compensation funds. This bill has nothing to do with the payment of workers' compensation benefits. Support is contingent on the Senate amendment providing that the bill be funded from the General Fund. Put the amendment into another section.

(Opposed) None.

Persons Testifying: (In support) Tamara Jones, Department of Labor and Industries; Addie Candib, Washington Young Farmers Coalition; and Scott Dilley, Washington Farm Bureau.

(With concerns) Patrick Connor, National Federation of Independent Business.

(Other) Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

Majority Report: Do pass as amended by Committee on Health & Human Services Appropriations & Oversight and without amendment by Committee on Labor & Workforce Development. Signed by 7 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Cody, Green, Kagi, Pettigrew and Walsh.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmick, Assistant Ranking Minority Member; Harris and Overstreet.

Staff: Amy Skei (786-7109).

**Summary of Recommendation of Committee On Health & Human Services
Appropriations & Oversight Compared to Recommendation of Committee On Labor &
Workforce Development:**

The Health and Human Services Appropriations and Oversight Committee recommended the removal of a provision stating that appropriations for the purposes of the act must be from the General Fund.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The average age of a farmer in Washington is approaching 60 years old. People in communities around the state are interested in getting involved in farming. Interning on a farm is a great way to learn the business, but it is not currently legal. The Department of Labor and Industries cracked down on a couple farms and said the interns had to be treated as full employees. The pilot program in two counties has been very successful. There is a lot of interest from small farms in other counties. This bill expands the program to more eastern Washington counties.

(Opposed) None.

Persons Testifying: Senator Ranker, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.