

SENATE BILL REPORT

SB 6352

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, January 26, 2006

Title: An act relating to protecting agricultural workers who are recruited, solicited, employed, supplied, transported, or hired by farm labor contractors.

Brief Description: Protecting agricultural workers.

Sponsors: Senators Kohl-Welles, Keiser, Franklin and Fairley.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/26/06 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6352 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

Minority Report: Do not pass.

Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

Staff: Alison Mendiola (786-7483)

Background: The Farm Labor Contractor Act (FLCA) was enacted in 1955.

A farm labor contractor is someone who recruits, solicits, supplies, transports, or hires agricultural workers, for a fee. To receive a farm labor contractor license, an application must be submitted to the Department of Labor and Industries (L&I) along with a surety bond and proof of liability insurance. The applicant must state whether his or her license has ever been suspended, revoked, or denied by any state or federal agency, and whether or not there are any outstanding judgments in any state or federal court arising out of the applicant's activities as a farm labor contractor. The farm labor contractor license fee is \$35 (\$100 for forestation or reforestation), and licenses may be issued on an annual or biannual basis.

A license may be denied to any person who proposes to sell intoxicating liquors on the premises where the person operates or proposes to operate as a farm labor contractor.

Farm labor contractors are required to provide the worker written information regarding the compensation to be paid, the conditions of any transportation, housing or other benefits, and the cost charged for such benefits, as well as the terms of employment.

A farm labor contractor or agricultural employer may not discharge or otherwise discriminate against any employee because the employee has made a claim, instituted proceedings, testified

against, or consulted with anyone regarding his or her rights against the farm labor contractor or agricultural employer.

H-2A Workers The H-2A Temporary Agricultural Program, administered by the U.S. Department of Labor (DOL), permits agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the United States to perform agricultural labor services of a temporary or seasonal nature.

Global Horizons Operating in Washington since 2004, Global Horizons (Global), a farm labor contractor, brought more than 100 temporary agricultural workers from Thailand to the Yakima Valley under the federal H-2A guest-worker program.

Based on complaints received, L&I and the Employment Security Department (ESD) conducted an investigation of Global's operations, resulting in a settlement (*In Re Global Horizons, Inc.*, Office of Administrative Hearings (OAH) Docket Nos. 2005-LI-0056 and 2005-ES-001, Sept. 22, 2005). Global operated as an unlicensed farm labor contractor in Washington from January to October 2004 and admitted to violating a number of state and federal laws and regulations including: failing to provide worker agreements; failing to include pay period information on an employee pay statement; withholding Washington State income tax; withholding federal taxes from H-2A employees who are not subject to federal taxes; housing employees in unapproved, unsafe, and unsanitary accommodations; underreporting the number of workers it intended to bring to Washington to work in 2005; failing to pay industrial insurance premiums for almost 75,000 employee hours; and the issuance of four separate Washington Industrial Safety and Health Act (WISHA) safety citations.

Global's license as a farm labor contractor was revoked on December 30, 2005, for failing to comply with all the terms of the settlement agreement.

Summary of Substitute Bill: A number of changes are made to the FLCA, including:

Licensing Licenses are issued on an annual basis. Applicants must demonstrate that they are in full compliance with the FLCA and applicable state and federal laws, file a repatriation bond (a bond that would cover airfare and other incidentals relating to transporting H-2A workers back to their country of origin), and must disclose any debts owed by or outstanding judgments from administrative or judicial determinations. License fees are to be revised at least once every two years, in accordance with the fiscal growth factor.

Grounds for Denying or Revoking a License A farm labor contractor license may be denied or revoked if the applicant has made any misrepresentations or false statements on the application, owes any debts or has any outstanding judgments from administrative or judicial determinations arising out of farm labor contracting, or has repeatedly violated or willfully aided or abetted any person in violation of any state or federal laws or statutes, international laws, or agreements with agricultural workers related to farm labor contracting activities.

A license may also be revoked if the farm labor contractor has violated or failed to comply with the terms of any working arrangement with an agricultural worker or if the continued operations pose a danger to public health, safety, or welfare. If a license is suspended or revoked, the Director of L&I (Director) may permit the farm labor contractor to continue operations in order to complete any existing contract. If the Director does not permit the farm

labor contractor to continue to operate to complete an existing contract period, then the farm labor contractor may appeal under RCW 34.05.479.

Anti-Retaliation Farm labor contractor or agricultural workers can not intimidate, threaten, restrain, coerce, or blacklist a worker because the worker has made a claim, instituted proceedings, testified in a proceeding, or inquired about his or her rights under the FLCA.

If a worker engages in protected conduct and any person takes any action against the worker within 90 days of the protected conduct, then a rebuttable presumption is made that the action is in violation of the FCLA.

"H-2A workers" The definition of a H-2A workers is added to the FLCA.

Records concerning an agricultural employer or the employer's agent that are in the possession of the ESD under the federal H-2A visa program are not deemed private and confidential under the FCLA, provided that the names or any other private information of any specific workers is redacted. Records include: applications submitted by the agricultural employer for H-2A certification, any correspondence between L&I and the agricultural employer related to an H-2A application that exists at that time, any documents regarding housing inspections and employer-provided transportation, or any job orders listed with ESD in response to an H-2A application or certification.

The opening public meetings statutes apply, where appropriate.

Transportation Safety Standards The Director is to adopt rules establishing safety standards applicable to the transportation of agricultural workers by farm labor contractors. At a minimum, the standards adopted are to offer the same protections and requirements as those adopted or recognized by the U.S. DOL.

Substitute Bill Compared to Original Bill: If the Director does not permit the farm labor contractor to continue to operate to complete an existing contract period, the farm labor contractor may appeal under RCW 34.05.479. Section 6 (3)(a)-(d) is restructured, but no substantive change is made, other than the right to appeal, as mentioned above.

Appropriation: None.

Fiscal Note: Available

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill offers heightened protections for vulnerable workers. The Act as written didn't anticipate the type of problems and loopholes that arose with Global Horizons. There is concern regarding the H-2A program because there are workers who feel they are being displaced when foreign workers are brought in. Also, safety protections are needed for the transportation of agricultural workers. This bill is not about Global, it's about the deficiencies in the current law, and this bill is not specifically about the H-2A program.

Testimony Against: It is impossible to find local workers who will work as sheepherders, so the H-2A program is very important to agricultural workers. This bill is overreaching, the

original intent of the Act is clamp down on bad actors, and the provisions of the bill allowed the agencies to respond to the Global situation so no changes are needed. The H-2A program is needed; there is a documented local worker shortage. Adding new provisions to the Act on top of the all work required to get H-2A workers is too big of a burden on employers.

Who Testified: PRO: Erik Nicholson, United Farm Workers (UFW); Martin Rios, UFW; Jeff Johnson, Washington State Labor Council; and Patrick Woods, Department of Labor and Industries.

CON: Dan Fazio, Farm Bureau; Max Fernandez, Fernandez Ranch; Kris Tefft, Association of Washington Businesses; Chris Cheney, WA Growers; and Gilbert Ocontu, Farm Bureau.