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## Labor & Workplace Standards Committee

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### **E2SSB 5438**

**Brief Description:** Establishing the office of agricultural and seasonal workforce services within the employment security department.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators McCoy, Saldaña, Conway, Van De Wege, Keiser, Rolfes, Wellman, Dhingra, Hasegawa and Kuderer; by request of Employment Security Department).

#### **Brief Summary of Engrossed Second Substitute Bill**

- Creates the Office of Agricultural and Seasonal Workforce Services (Office) within the Employment Security Department (ESD) to, among other tasks, process and adjudicate foreign labor applications and complaints; conduct field checks, training, and outreach; and collect any fees.
- Provides that the Office will be funded with an appropriation for the 2019-2021 biennium and that subsequently, the ESD will adopt fees to cover the cost of administering the H-2A program, if federal funds are not sufficient.
- Waives any fee for the first 10 workers and provides a limit of \$75 for each requested worker and a cap of \$500 per application.
- Requires the Commissioner of ESD to create an advisory committee to review issues related to the H-2A program.

**Hearing Date:** 3/28/19

**Staff:** Joan Elgee (786-7106).

#### **Background:**

The federal Immigration and Nationality Act provides for various classifications of non-immigrant visas. Classifications for temporary guest workers include the H-2A classification for

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seasonal agricultural workers. The H-2A program allows agricultural employers to bring in foreign workers temporarily when there are insufficient qualified United States (U.S.) workers. Employers using H-2A workers must pay specified rates of pay, provide the workers housing and transportation, guarantee employment for a specified period of time, and meet other requirements.

A prospective employer of H-2A workers first submits a U.S. Department of Labor form ETA 790 to the Employment Security Department (ESD) and upon approval, ESD initiates the recruitment of domestic workers. The employer must submit an application, including the accepted ETA 790 to the U.S. Department of Labor, which certifies the employment of H-2A workers. The ESD also conducts surveys to help establish pay rates; conducts field checks to review wages, hours, and other working conditions; and administers processes to discontinue services to employers. The state departments of Health and Labor and Industries have regulatory responsibility over temporary farmworker housing.

The ESD predicts employers will request more than 30,000 H-2A workers to work in Washington during 2019. The ESD receives an average annual funding level of about \$300,000 from the U.S. Department of Labor.

The ESD's administrative contingency fund provides for the financial of special programs to assist the unemployed and for ESD's administrative expenses.

### **Summary of Bill:**

#### Office of Agricultural and Seasonal Workforce Services.

The Office of Agricultural and Seasonal Workforce Services (Office) is established within the ESD to:

- process and adjudicate foreign labor applications and process complaints;
- conduct field checks and visits, as required by the U.S. Department of Labor, in coordination with other state agencies in order to limit disruption to agricultural employers and efficiently use government resources;
- administer the discontinuation and reinstatement of services process;
- conduct training and outreach activities to employers using agricultural and seasonal workforce services within the ESD; and
- if necessary, collect fees.

For the 2019-2021 biennium, the Office will be funded by an additional appropriation from the funds established in the administrative contingency fund. Prior to June 30, 2021, the ESD will analyze the costs incurred by the Office to administer the H-2A program, and the amount of funds allocated by the federal government. If the federal funds are not sufficient, the ESD will adopt rules to implement fees to cover the cost of administering the program.

The ESD may establish fees for each H-2A application submitted to the ESD and an additional fee for each requested H-2A worker. The fee per requested H-2A worker is waived for the first 10 workers requested annually for each employer. The fee for each requested worker must not exceed \$75. Any flat fee established per application must not exceed \$500. Fees must be adjusted annually for inflation. There must be a process for employers to request reimbursement

from ESD for fees paid for workers not federally certified. The ESD may not use fees to pay for any activity that is not specified in the U.S. Department of Labor annual H-2A funding grant.

The ESD may not process an H-2A application if the:

- employer does not pay established fees;
- employer refuses to agree to be subject to field checks and field visits; or
- the ESD discontinued services to the employer and that discontinuation remains in effect.

#### Advisory Committee.

The ESD Commissioner must appoint an advisory committee (committee) to review issues related to the H-2A program. The membership consists of:

- four voting members representing agricultural workers' interests, including one farmworker, and all from a list of at least four names submitted by a recognized statewide organization of workers;
- four voting members representing agricultural employers, including one agricultural employer, and all from a list of at least four names submitted by a recognized statewide organization of agricultural employers; and
- one ex officio member, without a vote, to represent the ESD and serve as the chair.

The departments of Labor and Industries, Health, and Agriculture each have one nonvoting ex officio member on the committee.

The committee will provide comment on rulemaking, policies, implementation of the provisions, and initiatives; and study other issues. Specifically, the committee may provide comment on the ESD's assessment of administrative costs.

The committee must submit a report, in even numbered years, to the Governor and the Legislature by October 31. The report must:

- identify and recommend approaches to increase the effectiveness of the ESD's recruitment process as part of the H-2A application, which may include changes to state law; and
- analyze the costs incurred by the Office to administer the H-2A program, the funds to administer other ESD programs for farmworkers, and the amount of funds allocated by the federal government to administer the H-2A and other agricultural programs within the ESD.

Committee members serve without compensation, but are entitled to reimbursement for travel expenses.

The H-2A Enforcement Account (account) is created. All receipts from any fees must be deposited into the account. Expenditures from the account may be used only for the purposes of the provisions and for surveying employers and workers using the agricultural prevailing wage survey and agricultural employment practice survey.

**Appropriation:** None.

**Fiscal Note:** Available.

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