

FINAL BILL REPORT

SHB 2226

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Synopsis as Enacted

Brief Description: Concerning collecting data on the H-2A worker program and from certain hand harvesters.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Ortiz-Self, Berry, Gregerson, Ramel, Santos, Reeves, Reed and Davis).

House Committee on Labor & Workplace Standards
Senate Committee on Labor & Commerce

Background:

H-2A Temporary Agricultural Worker Visa Program.

The federal H-2A program allows agricultural employers to hire foreign workers on temporary guest worker visas when there are insufficient qualified domestic farmworkers available and the use of H-2A workers would not have a negative effect on the wages or working conditions of domestic farmworkers. Although the United States Department of Labor (US DOL) establishes the rules for the federal program, the state Employment Security Department (ESD) is charged with administering certain aspects of the program.

Employers seeking to use the H-2A program must first submit a job order to the ESD. The job order includes the number of workers requested and other information, such as the wages the employer will pay. The ESD confirms that the job order meets federal requirements and notifies the US DOL. The ESD also engages in recruitment efforts to find domestic farmworkers, using the state's WorkSource offices. The ESD refers domestic applicants to the employer, and the employer is required to hire all qualified, able, willing, and available domestic farmworkers. Employers engage in direct recruitment of domestic farmworkers as well.

The employer then submits an application to the US DOL for certification to use temporary guest workers. The application may be submitted by a single employer or a group of employers that will jointly employ the workers. Once the US DOL determines that there

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are not enough domestic farmworkers to fill the employer's positions, the US DOL certifies the employment of H-2A workers. Employers using H-2A workers must pay specified rates of pay, provide the workers housing and transportation, and meet other requirements. The US DOL establishes what the prevailing wage rate for H-2A workers should be. The ESD conducts wage surveys of employers and some farmworkers, subject to federal H-2A regulations. Participation in the surveys are voluntary.

The ESD also conducts field visits, which are scheduled in advance, to help employers and H-2A farmworkers understand their rights and responsibilities, and to observe working and living conditions. The ESD also conducts field checks, which are random and unannounced, to ensure compliance with H-2A requirements.

Summary:

Data on H-2A Workers.

Whenever the ESD conducts field checks or field visits of an employer, the ESD must collect the following information:

- the number of H-2A workers the employer has at each work site; and
- the actual geographic location of where the H-2A workers are living during their employment with the employer.

The ESD must compile the information and compare the number of workers sought by an employer on the employer's H-2A application with the number of H-2A workers actually working for the employer. The ESD must make the information available to the Office of Agricultural and Seasonal Workforce Services' (ASWS) Advisory Committee on a quarterly basis.

Surveys of Hand Harvesters.

The ESD must conduct, or cause to be conducted, a comprehensive annual wage survey of non-H-2A workers hand harvesting apples, cherries, pears, and blueberries. At a minimum, the survey must:

- gather information on wage rates received for harvesting activities and whether the respondent earned the reported wages while working on a farm that employed H-2A workers to do the same kind of work;
- gather information on the respondent's age, gender, and whether the respondent was born in the United States or the number of years the respondent has been living in the United States; and
- include a question concerning whether the respondent made an unemployment insurance claim.

The ESD's survey must be designed to receive responses from a minimum of 2,800 total workers and must include field surveys designed to receive responses from a minimum of:

- 1,200 apple harvesters;
- 200 pear harvesters;

- 200 blueberry harvesters; and
- 350 cherry harvesters.

The survey must use best practices for administering field surveys of unknown populations. The ESD may use a phone survey to gather additional responses. The ESD must provide \$25 incentive payments for survey respondents eligible to respond to the survey.

The ESD must submit a report to the appropriate committees of the Legislature every year by May 1. The report must include information about the number of responses and individual responses, without names, by age, gender, United States birth or number of years in the United States, and aggregated unemployment insurance claims data.

Votes on Final Passage:

House	54	42	
Senate	27	22	(Senate amended)
House	56	39	(House concurred)

Effective: June 6, 2024