

HOUSE BILL REPORT

SSB 6349

As Reported by House Committee On:
Commerce & Labor

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, Holmquist, Haugen, Hobbs, Becker, Shin and Roach).

Brief History:

Committee Activity:

Commerce & Labor: 2/19/10, 2/23/10 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires the Department of Labor and Industries (Department) to establish a farm internship pilot project in San Juan and Skagit Counties.
- Sets standards for farm internship programs.
- Exempts services of farm interns from the Minimum Wage Act and from covered employment for purposes of unemployment insurance.
- Requires the Department to report to the Legislature by December 31, 2011.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Joan Elgee (786-7106).

Background:

Several laws address the obligation of an employer to persons working for the employer. These include the Minimum Wage Act (MWA), the Industrial Insurance Act, the

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Employment Security Act, and the Industrial Welfare Act (IWA). Exemptions apply to all of these laws.

Minimum Wage Act.

The MWA establishes a minimum wage which must be paid to all employees, unless exempt. Exempt employees include certain agricultural employees and volunteers for educational, charitable, religious, governmental, and nonprofit organizations. In addition, the Director of the Department of Labor and Industries may, to prevent curtailment of opportunities for employment, provide for the employment of learners under special certificates allowing wages lower than the minimum wage.

Industrial Insurance Act.

Industrial insurance provides medical and time-loss benefits to covered workers injured in the course of employment. Coverage is mandatory unless an exemption applies. Exemptions include certain persons working around the employer's private home, certain corporate officers, and a child between the ages of 18 - 20 years of age working in agricultural activities on the family farm. Employers must either insure through the state fund, or may self insure if qualified.

Employment Security Act.

Qualified individuals who become unemployed are entitled to unemployment benefits. Benefits are funded by contributions collected from most employers in the state. Exemptions include certain agriculture labor performed by students.

Industrial Welfare Act.

The IWA regulates hours and conditions of labor, and wages not covered by the MWA. The IWA also covers minor work permits, the family care law, and other matters. The provisions of the IWA relating to hours and conditions of labor and wages do not apply to certain agricultural labor by students.

Summary of Amended Bill:

Farm Internships.

The Department of Labor and Industries (Department) must establish a farm internship project in San Juan and Skagit Counties until December 1, 2011. Under the pilot project, the Department issues special certificates to small farms to employ farm interns at wages, if any, and subject to time, number, proportion, and length of service limits as specified by the Department. A "farm intern" is an individual who provides services to a small farm under a written agreement and primarily as a means of learning about farming practices and farm enterprises. A "small farm" has annual sales under \$250,000.

Farms must submit an application to the Department. The application must set forth:

- the name of the farm and a description of the activities of the farm;
- the type of work to be performed by a farm intern;
- a description of the internship program;
- the period of time for a certificate and the duration of an internship;

- wages, if any, that will be paid;
- any room and board, stipends, and other remuneration;
- the total number of interns sought; and
- the total number of workers employed on the farm.

The Department must issue a special certificate within 15 days if it finds that:

- the farm qualifies as a small farm;
- the farm has had no serious violations of the Minimum Wage Act or the Industrial Insurance Act that provide reasonable grounds to believe the terms of an agreement may not be complied with;
- the issuance of a certificate will not create unfair competitive cost advantages, or impair or depress wage or working standards for experienced farm workers;
- a farm intern will not displace an experienced worker; and
- the interns will perform work under an internship program that is designed to teach farm interns about farming practices and farm enterprises, is based on the bona fide curriculum of an educational or vocational institution, and is reasonably designed to provide the intern with knowledge and skills about farming practices and enterprises. The Department may consult with relevant college and university departments and programs, and state and local government agencies.

A special certificate issued by the Department must state the terms and conditions of the certificate, including the authorized wage rate, if any, the duration of an internship, and other specified matters. A farm may employ no more than three interns per year. A farm intern may be paid at wages specified in the certificate only during the effective period of the certificate and for the duration of the internship.

Procedures are set forth for a farm to appeal if the Department denies an application for a special certificate.

The Department may revoke a special certificate if a farm fails to comply with the Industrial Welfare Act or pay workers' compensation premiums for intern or non-intern work hours. The farm is required to sign a statement indicating that the farm understands these requirements.

A farm and farm intern must sign a written agreement which describes the internship program offered; explicitly states that the intern is not entitled to the minimum wage; describes the mutual responsibilities, expectations, and obligations, including the number of hours per week; describes the activities of the farm and the work the intern will perform; and describes any wages, room and board, stipends, and other remunerations.

The Department must report to the appropriate committees of the Legislature by December 31, 2011, on various matters relating to the pilot project, including the:

- number of farm interns;
- nature of the educational activities provided to farm interns;
- wages and other remuneration paid to farm interns;
- number of and type of workers' compensation claims for farm interns; and
- employment of farm interns following farm internships.

Minimum Wage Act.

A farm intern providing services to a farm that has a special certificate is not an employee for purposes of the Minimum Wage Act.

Industrial Insurance Act.

The Department must provide a special risk class or classes for farm interns by rule. The rules must include any requirements for a small farm to obtain a special risk class.

Employment Security Act.

Agricultural labor provided by a farm intern under an internship program is not considered covered employment for unemployment insurance purposes. Agricultural labor includes direct local sales of an agricultural or horticultural commodity after its delivery to a terminal market.

Other.

The provisions expire December 31, 2011.

Amended Bill Compared to Substitute Bill:

The amended bill does the following:

- changes the authorization to a pilot project;
- limits the number of interns a farm may have to three per year;
- adds the requirement that a farm intern will not displace an experienced worker;
- removes the exemption from the wages, hours, and working conditions provisions of the Industrial Welfare Act;
- adds the requirement that an internship program be based on the bona fide curriculum of an educational or vocational institution;
- adds provisions for revocation of special certificates and a farm's acknowledgement of circumstances under which a certificate may be revoked;
- eliminates rule-making authority except with respect to the special industrial insurance risk class or classes;
- provides that the Department of Labor and Industries (Department) may consult with colleges, as well as university departments and extension programs;
- adds the requirement for a report to the appropriate committees of the Legislature;
- makes clarifying changes including specifying that the wages are those authorized by the Department, providing that the intern may be paid the wage specified in the certificate only during the internship, and clarifying the Minimum Wage Act exemption language;
- makes technical changes such as correcting grammatical errors; and
- provides an expiration date of December 31, 2011.

Appropriation: None.

Fiscal Note: Available on substitute bill. New fiscal note requested on February 23, 2010.

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) Farms have used interns for years. Interns are college-age students who want to get their hands dirty. The average age of a farmer in Washington is 57 years old and a way is needed to pass on knowledge to the next generation. If these people were employees, a farmer would have to hire someone to manage employee standards. This bill provides a structure for agricultural education with oversight from the Department of Labor and Industries (Department). The United States Department of Agriculture's definition of a "small farm" is used. This bill has significant support from farms and from interns. Some farmers were told by the Department that interns were employees and sought legislation. Without this bill, the state will lose the ability to have farm interns.

(Available for questions) Available for questions.

(Opposed) None.

Persons Testifying: (In support) Senator Ranker, prime sponsor; Scott Dilley, Washington Farm Bureau; and Sue Lani Madsen.

(Available for questions) Vickie Kennedy and Suchi Sharma, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.