

SENATE BILL REPORT

SHB 2226

As Reported by Senate Committee On:
Labor & Commerce, February 15, 2024

Title: An act relating to collecting data on the H-2A worker program and from certain hand harvesters.

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).

Brief History: Passed House: 2/7/24, 54-42.

Committee Activity: Labor & Commerce: 2/15/24 [DPA, DNP].

Brief Summary of Amended Bill

- Requires the Employment Security Department (ESD) to collect certain data about H-2A workers when conducting field checks and field visits.
- Requires ESD to conduct annual wage surveys of non-H-2A workers hand harvesting apples, cherries, pears, and blueberries.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Hansen and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

Staff: Susan Jones (786-7404)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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. ESD confirms that the job order meets federal requirements and notifies US DOL. ESD also engages in recruitment efforts to find domestic farmworkers, using the state's WorkSource offices. ESD refers domestic applicants to the employer, and the employer is required to hire all qualified, able, willing, and available domestic farmworkers. Employers also 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. US DOL must determine that there are not enough domestic farmworkers to fill the employer's positions. US DOL then 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. US DOL establishes what the prevailing wage rate for H-2A workers should be. ESD conducts wage surveys of employers and some farmworkers, subject to federal H-2A regulations. Participation in the surveys are voluntary.

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. ESD also conducts field checks, which are random and unannounced, to ensure compliance with H-2A requirements.

Office of Agricultural and Seasonal Workforce Services. The Office of Agricultural and Seasonal Workforce Services (ASWS) was created within ESD to, among other things, process and adjudicate foreign labor certification applications from employers, conduct field checks and field visits and conduct training and outreach activities to employers using the H-2A program. ESD Commissioner appointed an advisory committee (Advisory Committee) within ASWS to review issues related to the H-2A program. The Advisory Committee consists of members representing agricultural workers and employers.

Summary of Amended Bill: Data on H-2A Workers. Whenever ESD conducts field checks or field visits of an employer, ESD must collect:

- 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.

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. ESD must make the information available to the Advisory Committee on a quarterly basis.

Surveys of Hand Harvesters. ESD must conduct 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 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;
- include a question concerning whether the respondent made an unemployment insurance claim; and
- gather information on whether the respondent earned the reported wage while working on a farm that employed H-2A workers to do the same kind of work

ESD must use a phone survey designed to receive responses from a minimum of 850 total fruit harvesters. Beginning fiscal year 2025, the ASWS Office must include field surveys designed to receive responses from a minimum of:

- 1200 apple harvesters;
- 200 pear harvesters;
- 200 blueberry harvesters; and
- 350 cherry harvesters.

The survey may use a phone survey to gather the additional responses. ESD must provide \$25 incentive payments for survey respondents eligible to respond to the survey.

ESD must submit a report to the appropriate committees of the Legislature every year by May 1st. The report must include information about the number of responses and individual responses.

EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S):

- Requires the survey to gather information on whether the respondent earned the reported wages while working on a farm that employed H-2A workers to do the same kind of work.
- Provides that the survey be designed to receive responses from a minimum of 2,800 workers, rather than to receive responses from a minimum of 850 total fruit harvesters.
- Allows the use of a phone survey.
- Modifies the individual responses, without names, to include each respondent's answers to be included in the report to the Legislature.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* No public hearing was held.

Persons Testifying: N/A

Persons Signed In To Testify But Not Testifying: N/A