

# SENATE BILL REPORT

## SB 5996

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As Reported by Senate Committee On:  
Labor & Commerce, January 30, 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:** Senators Saldaña, Valdez, Hunt, Shewmake, Trudeau, Kauffman, Conway, Dhingra, Hasegawa, Keiser, Nguyen, Nobles, Stanford and Wilson, C..

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/29/24, 1/30/24 [DPS, DNP].

**Brief Summary of First Substitute 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 workers hand harvesting apples, cherries, pears, and blueberries.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 5996 be substituted therefor, and the substitute bill do pass.

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.

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*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.*

**Staff:** Susan Jones (786-7404)

**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 Bill (First Substitute):** 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 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; and
- include a question concerning whether the respondent made an unemployment insurance claim in the survey period.

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.

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, without names, by age, gender, United States birth or number of years in the United States; and whether the respondent filed an unemployment insurance claim.

**EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):**

- Modifies the survey requirements to be conducted by the Employment Security Department and in the chapter related to labor market information and economic analysis (rather than conducted by the Office of Agricultural and Seasonal Workforce Services and in the chapter for the ASWS Office as in the original bill).
- Changes the date ESD must begin the field surveys to beginning in fiscal year 2025 (rather than fiscal year 2024 as in the original bill).
- Add a federal severability clause.

**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 Original Bill.** *The committee recommended a different version of the bill than what was heard.* PRO: We are looking for ways to minimize the hurdles to gather the information needed related to H-2A workers. When the program was established, Congress was worried that it would bring down wages. The surveys were supposed to provide a prevailing wage but the recent results are not doing their job. ESD only takes employer information. ESD uses phone surveys and it is too small a survey. Workers are not listened to when they complain. We want ESD to talk to us and not get the information through technology and phone calls.

The ASWS relies on an advisory committee, who need accurate information to advise ASWS. The fiscal note is modest in comparison to the agriculture revenue.

CON: Section 1 is not necessary; the information is available publicly already. Section 2 is not needed; ESD already does surveys. ASWS does field checks that collect data already and they are allowed to collect information. This raises the question of why and at what cost. The data collected cannot be used under US DOL rules. If changes need to be made, this should be discussed at an ASWS meeting. The problem should be addressed at ESD and not overburden ASWS.

OTHER: We would like some technical change. The requirements of ASWS should be with the Labor and Markets staff. We would like to extend the start date and have a severability clause.

**Persons Testifying:** PRO: Senator Rebecca Saldaña, Prime Sponsor; Elizabeth Strater, United Farm Workers ; Andrea Schmitt, Columbia Legal Services; Benito Lopez, Familias Unidas por la Justicia; Rosalinda Guillen, Community to Community Development Projects.

CON: Scott Dilley, Wafla; Nora Palattao Burnes, Washington Growers League.

OTHER: Caitlyn Jekel, WA State Employment Security Dept.

**Persons Signed In To Testify But Not Testifying:** No one.