

HOUSE BILL REPORT

ESHB 1141

As Passed House:

March 11, 2025

Title: An act relating to placing certain agricultural workers who are engaged in cultivating, growing, harvesting, or producing cannabis under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Brief Description: Concerning collective bargaining for agricultural cannabis workers.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Ortiz-Self, Fosse, Ryu, Leavitt, Stearns, Farivar, Berry, Reed, Ramel, Fitzgibbon, Macri, Cortes, Obras, Doglio, Bronoske, Gregerson, Simmons, Peterson, Street, Goodman, Wylie, Kloba, Ormsby, Scott and Hill).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/15/25, 1/22/25 [DPS].

Floor Activity:

Passed House: 3/11/25, 55-40.

Brief Summary of Engrossed Substitute Bill

- Creates collective bargaining procedures for certain agricultural workers involved with cannabis production and processing.
- Authorizes the Public Employment Relations Commission to administer and enforce these procedures.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Bronoske, Obras and Ortiz-Self.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; McEntire.

Staff: Benjamin McCarthy (786-7116).

Background:

The federal National Labor Relations Act (NLRA) governs collective bargaining rights in the private sector. The NLRA states that workers under its jurisdiction have, among other rights, the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to refrain from such activities subject to certain limits. The NLRA is administered and enforced by the National Labor Relations Board (NLRB).

The NLRA excludes certain groups of workers in the private sector from its coverage, including agricultural laborers.

In Washington, the Public Employees' Collective Bargaining Act (PECBA) and other laws govern collective bargaining rights in the public sector. The PECBA and most other public sector collective bargaining laws are administered and enforced by the Public Employment Relations Commission (PERC).

The only private sector workers that the PERC's jurisdiction extends to are symphony musicians employed by symphony orchestras with gross revenue of more than \$300,000, who are not otherwise covered by the NLRA.

Summary of Engrossed Substitute Bill:

Procedures are established for implementing and enforcing collective bargaining between certain cannabis industry employers and certain cannabis agricultural employees who perform the work of cultivating, growing, harvesting, or producing cannabis, including defoliating, drying, bucking, precuring, curing, drying, trimming, sorting, and loading, if performed on a farm. These procedures are administered and enforced by the Public Employment Relations Commission (PERC).

Organizing Rights.

Employers, defined as a licensed cannabis producer or a licensed cannabis processor whose premises is colocated on a farm licensed for cannabis production, are prohibited from interfering with, restraining, coercing, or discriminating against employees in the free exercise of their right to organize and designate representatives for the purpose of collective bargaining.

Bargaining Units and Representatives.

The bargaining unit and bargaining representative may be determined by agreement between employees and employers. However, if the parties disagree, the PERC must be invited to intervene.

In determining a bargaining unit, the PERC must consider: the duties, skills, and working conditions of the employees; the history of collective bargaining by the employees and their representatives; the extent of organization among the employees; and the desire of the employees.

Election or Cross-Check of Bargaining Representatives.

If the parties cannot agree on a bargaining representative, the PERC must determine the bargaining representative through an election or cross-check process.

If a prospective bargaining representative shows written proof of at least 30 percent representation of the employees within the unit, the PERC must hold an election by ballot. If no prospective bargaining representative receives a majority of the vote, a runoff election between the two prospective bargaining representatives with the most votes must be held.

If a prospective bargaining representative shows written proof of at least 50 percent representation of the employees within a bargaining unit, and there is no incumbent exclusive bargaining representative, the PERC must hold an election through a cross-check process. During the cross-check process the PERC must compare membership records or bargaining authorization cards with the employer's employment records.

Consolidation of Bargaining Units.

If a single organization is the exclusive bargaining representative for two or more units, it may petition the PERC to consolidate into a single larger unit. The PERC will consolidate the units, if it considers the larger unit appropriate, and certify the organization as the exclusive bargaining representative of the consolidated unit.

Collective Bargaining.

Both employers and exclusive bargaining representatives have a mutual obligation to negotiate in good faith and to execute a written agreement with respect to mandatory subjects of bargaining (grievance procedures and personnel matters: including wages, hours, and working conditions).

Agreements also may provide for binding arbitration of labor disputes arising from the application or interpretation of the collective bargaining agreement.

Employee Authorization and Revocation of Membership Due Deductions.

If a bargaining unit employee authorizes a payroll deduction for union dues, the employer must deduct the dues from the employee's payment and transmit the dues to the exclusive bargaining representative.

An employee's deduction authorization remains in effect until expressly revoked, in writing, by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization. Once an employer receives confirmation from the exclusive bargaining representative that the employee has revoked the authorization, the employer must end the deduction no later than the second payroll after receipt of confirmation.

A collective bargaining agreement may include deductions for other payments, which the employer must also deduct once authorized to do so by an employee.

Impasse Procedures.

If a collective bargaining agreement cannot be concluded, the parties may submit the dispute to the PERC. If an employer implements its last and best contract offer where there is no settlement, allegations that either party is violating the terms of the implemented offer are subject to arbitration under any procedures that are in the parties' last contract or, if no such procedures exist, any procedures in the implemented offer.

Unilateral Implementation.

Following termination of an agreement, the terms and conditions of the agreement remain in effect until the effective date of a subsequent agreement, but the continuation must not exceed one year from the original termination date. After the one-year period, the employer may unilaterally implement changes to employment conditions, according to law.

This does not apply to provisions of a collective bargaining agreement that the parties agree to exclude from coverage; provisions in an agreement that have separate and specific termination dates; and agreements in effect or being bargained on the bill's effective date.

Grievance Arbitration.

The parties may request that the PERC appoint an arbitrator to assist in the resolution of labor disputes arising from the application of the matters contained in a collective bargaining agreement. The arbitrator must conduct the arbitration in the manner provided for in the agreement. The PERC may not collect fees or charges for its services.

Required Disclosures by the Employer.

An employer must provide certain information about each employee in a bargaining unit to the exclusive bargaining representative if the employer has the information in its records.

This information includes employee's name and date of hire, the employee's contact information, and the employee's employment information. This information must be provided in an editable digital file format within 21 business days of hire for newly hired bargaining unit employees and every 120 business days for all bargaining unit employees.

The exclusive bargaining representative may only use this information for the purpose of representation.

Unfair Labor Practices.

Unfair labor practices are enumerated for both employers and bargaining representatives.

Employers may not:

- interfere with, restrain, or coerce employees in the exercise of their rights;
- control, dominate, or interfere with a bargaining representative;
- engage in or create the impression of surveillance of activities protected by this chapter;
- discriminate against an employee who has filed an unfair labor practice charge or who has given testimony; or
- refuse to engage in collective bargaining.

Bargaining representatives may not:

- interfere with, restrain, or coerce employees in the exercise of their rights;
- induce an employer to commit an unfair labor practice;
- discriminate against an employee who has filed an unfair labor practice charge or who has given testimony; or
- refuse to engage in collective bargaining.

The PERC must prevent unfair labor practices and issue remedial orders. An unfair labor practice complaint must be filed with the PERC within six months of the unfair practice. If a person has engaged in or is engaging in an unfair labor practice, the PERC must issue a cease-and-desist order. The PERC also may require the person to pay damages or reinstate employees. The PERC may petition the superior court for enforcement of its order and appropriate temporary relief.

Rulemaking.

The PERC may adopt rules in conformity with the law's intent and purpose and consistent with the best standards of labor-management relations.

Interpretation.

Courts are forbidden from expanding the collective bargaining rights granted to the enumerated cannabis agricultural employees to other groups of employees.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Most cannabis employees have the right to organize under the federal National Labor Relations Act (NLRA), but agricultural cannabis workers are excluded. The NLRA does not preempt states from stepping in. This gives agricultural cannabis workers the same rights as other private employees. Allowing all cannabis workers to organize will increase equity. It will allow agricultural cannabis workers to organize for better wages and safer workplaces. Passing this will increase the stability of the workforce, which will increase the industries' ability to keep and train the skilled workers it needs. This is about addressing past injustice: the War on Drugs targeted people of color, those populations now make up parts of the agricultural cannabis workers workforce, so this is about addressing past injustice.

(Opposed) Cannabis producers are small businesses working in a closed market and closed system. The market is over supplied with product and producers cannot compete with black market prices. Very few of these producers operate at a profit and they are going out of business. It is not fair for cannabis agricultural workers to be treated differently from other agricultural workers. The Public Employment Relations Commission could use its powers to threaten the cannabis industry. This could be amended to include other agricultural workers. This is flawed because it allows for cross-check or card check process for electing exclusive bargaining representatives. These processes are undemocratic and susceptible to manipulation and coercion. The card check process should be removed and only secret ballot elections allowed.

Persons Testifying: (In support) Representative Lillian Ortiz-Self, prime sponsor; Libby Rindal; Mike Asai, Black Excellence in Cannabis; Nate Howell; Morgan Combs; Jess Combs; and Dustin Lambro, UFCW 3000.

(Opposed) Ezra Eickmeyer; Vicki Christophersen, Washington CannaBusiness Association; Michael Gempler, Washington Growers League; and Scott Dilley, WAFLA.

Persons Signed In To Testify But Not Testifying: None.