**ESD Agency Request Legislation**

**H-2A** **Temporary Agricultural Program Bill**

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***August 2018***

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| **Summary** |
| On behalf of the U.S. Department of Labor, the Employment Security Department (ESD) plays a role in the H-2A temporary agricultural visa program in Washington state. The agricultural industry is vitally important, annually employing about 100,000 domestic farmworkers and generating more than seven billion dollars of economic activity. However, since 2009, the number of H-2A workers requested in Washington has increased by more than 1,070 percent and the number of H-2A applications from agricultural employers has increased by 670 percent. We are projecting that almost 30,000 H-2A workers will be requested to work in Washington during 2019, ranking Washington third in the nation for the number of H-2A workers.  The federal funding to administer the program is not sufficient to cover the costs of the H-2A program, particularly at this increased level. To resolve this problem, ESD is proposing legislation to create a funding mechanism to cover the costs tied directly to the use of the program.  This bill will provide a sustainable funding source and the resources needed to provide adequate education and outreach to agricultural employers and farmworkers, process H-2A applications timely and accurately, and help us protect both foreign and domestic farmworkers. |
| **Deficiencies in federal funding** |
| We receive federal funding to conduct various activities as part of the H-2A program, however, the funding is not sufficient to support the H-2A work required to meet the federal performance requirement or provide the adequate protections or services agricultural employers and farmworkers need.  Over the last five years, the Employment Security Department has received an average annual funding level of just over $300,000 from the U.S. Department of Labor to perform the work associated with the H-2A visa program. These funds are intended to cover reviewing and processing the H-2A application, conducting prevailing wage and employment practices surveys of both agricultural growers and farmworkers to set prevailing wages for various crop varieties and activities to be used for H-2A contracts, and the cost for the Department of Health to certify the temporary worker housing meets the health and safety requirements. Given the increased use of the program, that funding level is insufficient to meet those demands.  In addition, the U.S. Department of Labor requires ESD to conduct additional work associated with the H-2A program including:   * Recruitment of domestic farmworkers for agricultural employers seeking to use the H-2A program. * Conducting field checks and field visits to ensure workers are being treated in compliance with their H-2A contracts. * Oversight of the determination and appeals process if an agricultural employer using the H-2A program is found out of compliance with federal regulations. * Extensive outreach and education to agricultural employers and farmworkers. * Investigating complaints associated with the H-2A program and referring them to the appropriate enforcement agency. |
| **Office of the State Monitor Advocate** |
| |  |  |  | | --- | --- | --- | | This bill would create the Office of the State Monitor Advocate within the Employment Security Department. This expands the current role of the ESD State Monitor Advocate and will allow the office to conduct an adequate number of field checks and field visits, provide training and outreach to H-2A agricultural employers and farmworkers, manage the determination and appeals process if an agricultural employer using the H-2A program is found out of compliance with federal regulations, create a Spanish phone line for farmworkers to report concerns directly to ESD, improve complaint processing, fully fund the prevailing wage and employment practices surveys of agricultural employers and workers, and collect the fees established as part of the bill.   |  | | --- | | **Application Fee** | | This bill would require agricultural employers who seek to use the H-2A program to pay $1,000 for each H-2A application and $100 per worker for each of the first 1,000 H-2A workers requested. If employers request more than 1,000 H-2A workers as part of an application, they will pay $50 per worker above 1,000. This fee would apply to all H-2A applications submitted after December 31, 2019.  The revenue generated from this application fee would go into a newly created H-2A enforcement account in Washington State Treasurer’s Office. | | |
| **Expected revenue** |
| Under the current structure of the bill, we expect the application fee would generate about $3 million which will supplement the inadequate federal funding and allow ESD to provide the services required under the H-2A program and ensure the protection and safety of agricultural employers and foreign and domestic farmworkers.   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  | **Number** | **Fee** | | **Total** | | | **Number of applications submitted** | 300 | $1,000 | $300,000 | | | | | **Number workers in contracts requesting less than 1,000** | 27,600 | $100 | $2,760,000 | | | **Number workers in contracts requesting more than 1,000** | 2,400 | $50 | $120,000 | | | **Total** | | | $3,180,000 | | |
| **Contact** |

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