

HB 4002 -1, -5 STAFF MEASURE SUMMARY

House Committee On Business and Labor

Prepared By: Tyler Larson, LPRO Analyst

Sub-Referral To: House Committee On Revenue

Meeting Dates: 2/8, 2/14

WHAT THE MEASURE DOES:

Establishes maximum hour and overtime requirements for agricultural workers. Defines terms. Establishes that maximum hours for agricultural workers are: for calendar years 2023 and 2024, 55 hours per workweek; for calendar years 2025 and 2026, 48 hours per workweek; and for calendar year 2027 and thereafter, 40 hours per workweek. Requires employer to compensate agricultural worker at one and one-half times the worker's regular rate for time in excess of the maximum allowable hours. Establishes that employer is liable to agricultural worker for unpaid wages and authorizes enforcement by wage complaint to the Bureau of Labor and Industries or private right of action. Establishes credit against taxes for a percentage of overtime wages paid by a crop or animal production business to an agricultural worker of: 50 percent of excess wages paid in tax years 2023 and 2024; 35 percent of excess wages paid in tax years 2025 and 2026; and 20 percent of excess wages paid in tax years 2027 and 2028. Requires taxpayer to submit application with specific information for certification to Employment Department and requires Employment Department to certify to Department of Revenue that the taxpayer is an eligible employer and indicating the maximum amount of credit for which the taxpayer is eligible. Allows unused credit to be carried forward to three succeeding tax years. Allows nonresidents to claim prorated credit. Provides that amount certified for tax credit may not exceed \$20 million for all taxpayers for any calendar year and requires credits to be proportionally reduced if the amount certified exceeds the maximum. Takes effect on 91st day after sine die.

Fiscal impact posted; revenue impact posted

ISSUES DISCUSSED:

- History and intent of agriculture worker exclusions from state and federal wage and hour laws
- Outcomes in states that have adopted maximum hour and overtime requirements for agricultural workers
- Potential impacts of maximum hour and overtime requirements to Oregon farms and Oregon farm workers
- Relative merits of proposed amendments

EFFECT OF AMENDMENT:

-1 Replaces the measure. Establishes maximum hour and overtime requirements for agricultural workers. Defines terms. Establishes that maximum hours for agricultural workers are: for calendar year 2023, 60 hours per workweek; for calendar year 2024, 54 hours per workweek; and for calendar year 2025 and thereafter, 50 hours per workweek. Allows agricultural employer to designate peak labor period of no more than 22 weeks per calendar year during which maximum hours are 60 hours per workweek. Requires employer to provide annual written notice to employees of maximum hours during peak labor period and a good faith estimate of when the peak labor period will occur. Requires 30-day notice to certain employees before peak labor period begins. Requires employer to compensate agricultural worker at one and one-half times the worker's regular rate for time in excess of the maximum allowable hours. Exempts from overtime requirements agricultural worker who: performs work for an employer who is member of the employee's immediate family; or is engaged in dairying or other production of livestock on or off the range. Establishes that employer is liable to agricultural worker for unpaid wages and authorizes enforcement by wage complaint to the Bureau of Labor and Industries or private right of action. Takes effect on 91st day after sine die.

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-5 Defines "salary" and exempts from overtime requirements individuals employed in agriculture who are also exempt from the state minimum wage and individuals employed in agriculture whose principal duties are administrative, executive, or professional work and who are paid a salary and on a salary basis. Replaces provisions related to credit against taxes. Establishes refundable credit against corporate taxes for a percentage of overtime wages paid by a crop or animal production business that employs more than 25 full-time equivalent employees to an agricultural worker of: 60 percent of excess wages paid in calendar years 2023 and 2024; 45 percent of excess wages paid in calendar year 2025; 30 percent of excess wages paid in calendar year 2026; and 15 percent of excess wages paid in calendar years 2027 and 2028. Establishes refundable credit against corporate taxes for a percentage of overtime wages paid by a crop or animal production business that employs 25 or less full-time equivalent employees to an agricultural worker of: 75 percent of excess wages paid in calendar years 2023 and 2024; 60 percent of excess wages paid in calendar year 2025; 45 percent of excess wages paid in calendar year 2026; 30 percent of excess wages paid in calendar year 2027; and 15 percent of excess wages paid in calendar year 2028. Allows nonresidents to claim prorated credit. Requires Department of Revenue to adopt rules for purposes of administering tax credit including policies and procedures for certifying taxpayers as eligible for the credit. Requires taxpayer to submit application with specific information for certification to Department by January 31 following the calendar year for which the taxpayer seeks the credit and Department to issue written certification to taxpayer by August 1. Requires Department upon receipt of application to allow an extension for filing the taxpayer's income or corporate excise tax return. Provides that amount certified for tax credit may not exceed \$27 million for all taxpayers for any calendar year and requires credits to be reduced proportionally if the amount certified exceeds the maximum. Appropriates funds to Department for administration of refundable credit. Takes effect on 91st day after sine die.

BACKGROUND:

Both federal and state law establish a maximum hour requirement of 40 hours per week and require employers to pay one and one-half times the worker's regular rate of pay for all hours worked in excess of the weekly maximum. Workers in the agriculture industry are exempt from both the state and federal maximum hour and overtime requirements, meaning there is no maximum weekly hour threshold for Oregon's agriculture industry and workers are not entitled to overtime pay. Petitioners seeking judicial review to overturn the state administrative rules that exempt agricultural workers from the state maximum hour and overtime requirements argue the exemption falls outside of the agency's statutory authority and runs afoul of Article 1, Section 20 of the Oregon Constitution which prohibits laws granting privileges or immunities to any citizen or class of citizens that do not apply equally to all citizens.

Seven states have adopted maximum hour and overtime requirements for agricultural workers. California enacted a 2016 measure phasing in maximum daily and weekly overtime requirements for agricultural workers that establish a 40-hour maximum hour requirement in 2022 for employers with 26 or more employees and 2025 for smaller operations. In a 2020 decision, the Washington Supreme Court ruled a state law exempting agricultural industry employers from paying overtime violated a unique state constitutional provision requiring the legislature to pass laws necessary for the protection of workers in "employments dangerous to life or deleterious to health" when applied to dairy workers. A law enacted last year will phase in a 40-hour maximum hour and overtime requirement for all other Washington agricultural workers by 2024.

House Bill 4002 with the -5 amendments establishes maximum hour and overtime wage requirements for Oregon agricultural workers and uses a refundable tax credit to offset a percentage of the additional cost of overtime pay for agricultural employers. Maximum hours are phased in over five years starting at 55 hours in 2023 and reducing to 40 hours by 2027. The refundable tax credit for a portion of the additional cost of overtime is available for overtime wages paid through 2028 and is more generous for agriculture employers with the equivalent of 25 or

less full-time employees.

Table 1: Proposed Maximum Hours and Tax Credit, -3 Amendments

Year	Maximum Hours	>25 FTE Tax Credit as percent of additional cost of overtime	≤25 FTE Tax Credit as percent of additional cost of overtime
2023	55	60%	75%
2024	55	60%	75%
2025	48	45%	60%
2026	48	30%	45%
2027	40	15%	30%
2028	40	15%	15%
2029+	40	N/A	N/A

House Bill 4002 with the -1 amendments establishes maximum hour and overtime wage requirements for Oregon agricultural workers. Maximum hours are 60 hours per week in 2023, 54 hours per week in 2024, and 50 hours per week in 2025 and thereafter. The measure allows agricultural employers to select a peak labor period of up to 22 weeks per year during which the maximum hours are 60 hours per week. Employers must provide annual written notice to employees of the expectations for the peak labor period and notice to certain employees at least 30 days before the peak labor period begins.