

**HB 4002 B STAFF MEASURE SUMMARY****Carrier:** Sen. Taylor**Joint Committee On Farm Worker Overtime****Action Date:** 02/24/22**Action:** Do pass the B-Eng bill.**Senate Vote****Yeas:** 3 - Jama, Lieber, Taylor**Nays:** 2 - Hansell, Knopp**House Vote****Yeas:** 3 - Holvey, Nathanson, Valderrama**Nays:** 2 - Bonham, Boshart Davis**Fiscal:** Fiscal impact issued**Revenue:** Revenue impact issued**Prepared By:** Kyle Easton, Economist**Meeting Dates:** 2/24, 2/24**WHAT THE MEASURE DOES:**

Establishes maximum hour and overtime compensation requirements for employers of agricultural workers. Defines terms. Establishes maximum hours employers may require of agricultural workers prior to compensating additional hours as overtime. Specifies maximum hours as: 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. Specifies overtime compensation as one and one-half times the worker's regular rate of pay for each overtime hour. Exempts from overtime requirements individuals employed in agriculture who are also exempt from 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. 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.

Creates refundable personal and corporate income tax credit available to eligible employers that provide overtime compensation to agricultural workers. Specifies credit as equal to a percentage of the actual incremental overtime compensation paid to agricultural workers during the calendar year. Specifies varied credit percentages depending on year, number of full-time equivalent employees employed by taxpayer and if employer is engaged in the business of dairying. Prohibits licensed labor contractors from claiming the credit but allows an eligible employer to claim credit for wages paid to workers by a labor contractor on behalf of the eligible employer. Requires taxpayer to receive notice of acknowledgement from Department of Revenue prior to claiming the credit. Limits total amount of tax credits allowed as acknowledged in notices to \$55 million for all taxpayers for any calendar year. Requires Department of Revenue to proportionately reduce the amount of credits among all taxpayers if necessary due to exceeding annual credit limit. Specifies credit is available for tax years beginning on or after January 1, 2023.

Requires report on identified economic impacts of the overtime compensation requirements to be submitted to Legislative Assembly no later than November 20, 2026 and every six years thereafter. Specifies contents of report. Requires Department of Agriculture and the Oregon Business Development Department to make recommendations for legislation related to establishing agriculture grant, loan, or lending program.

**ISSUES DISCUSSED:**

Received public testimony

- Description of measure provisions and amendment being discussed

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- Existing applicability of overtime laws and historical context
- Potential implications of overtime pay requirement on farms, especially smaller farms
- Potential impacts on agriculture employees from requiring overtime pay
- Trends in small and midsize farms in Oregon
- Overtime policies of other western states
- Potential response from farm employers
- Proposed amendments posted to OLIS during committee meeting
- Personal experiences of agricultural workers and employers
- Average agricultural employee wage rate in Oregon
- Farm business organizational structure.

### Work Session

- Proposed -A10 amendment
  - Contents and intent of amendment
  - Overtime compensation requirements of employers
  - Proposed Agricultural Worker Overtime Relief Payment Program
- Proposed -A12 amendment
  - Contents and modifications of proposed amendment
  - Ability of a qualified employer to benefit from tax credit in instances where farm relies exclusively on labor supplied from a labor contractor
  - Interaction between labor contractors and farms
  - Timing of tax credit benefit for taxpayer
  - Proposed grant, loan or lending program
- Intent of policy
- Structure and design of tax credit
- Future of tax credits
- Study to be submitted to Legislative Assembly
- Piece rate workers
- Potential overtime compensation requirement rule change.

### **EFFECT OF AMENDMENT:**

Modified tax credit percentages. Increased annual credit limit to \$55 million per calendar year. Requires report on impacts of overtime compensation requirements. Requires recommendations for legislation from Department of Agriculture and Oregon Business Development Department.

### **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

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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 A 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.