

HB 2548 -2 STAFF MEASURE SUMMARY

House Committee On Labor and Workplace Standards

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/12

WHAT THE MEASURE DOES:

The measure establishes the Agricultural Workforce Labor Standards Board. Declares an emergency, effective on passage.

Detailed Summary:

Prescribes the duties of the board.

Directs the board to establish minimum working standards for agricultural workers.

Provides remedies for agricultural workers alleging a violation of the minimum standards established by the board.

Requires the board to conduct an biennial comprehensive review to determine whether to adopt new minimum standards or revise existing standards.

Directs the board to establish uniform training requirements for agricultural workers, supervisory and nonsupervisory employees and establish a process by rule for certifying worker organizations to provide the training to agricultural workers.

Requires the board to submit an annual report to the Governor and the Legislative Assembly summarizing the results of the comprehensive review and any actions taken by the board in the prior year.

Prohibits employers from terminating an agricultural worker unless the termination is for cause. Sets forth the conditions that must be satisfied in order to determine the existence of cause. Provides remedies for agricultural workers alleging a retaliation or a violation of the for cause standard.

Fiscal impact: (info)

Revenue impact: (info)

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces the measure.

Section 1- Definitions

Section 2 - 3 - Agricultural Workforce Labor Standards Board (AWLSB)

Establishes AWLSB within the Bureau of Labor and Industries (BOLI) for the purpose of establishing minimum standards for working conditions of agricultural workers. Minimum standards may include compensation, work schedules, and other working conditions to protect the health and welfare of workers.

AWLSB consists of 11 members appointed by the BOLI Commissioner. Specifies terms. Specifies quorum and voting requirements. Authority to appoint executive director. Authority of the Executive Director to hire staff.

The composition is as follows:

- Two agricultural employers
- One person who represents interests of agricultural workers.
- One person who represents BOLI enforcement divisions.
- Two people who represent Oregon OSHA
- One person from Oregon Department of Agriculture
- One person with legal knowledge and expertise in laws related to agriculture.

AWLSB are eligible for per diem, not less than \$151 for expenses member incurs.

AWLSB are public meetings, held at least once a month in different locations around the state. Meetings are required to have accommodations including closed captioning, sign language interpretation, and language interpretations.

Section 4 – Duties of AWLSB

AWLSB will establish minimum standards may include compensation, work schedules, and other working conditions to protect the health and welfare of workers.

- Prohibits AWLSB from establishing:
 - Standards that are less protective or beneficial than other applicable statute or rule or standard previously established.
 - Overtime compensation requirements for agricultural workers.
 - Paid benefits.
- At a minimum, the standards must:
 - Set compensation rates that are not less than the greater of either the applicable minimum wage rate or the H-2A Adverse Effect Wage Rate.
 - Set compensation rates for piece-rate workers that accounts for the geographic area where work is performed, type of work performed, and potential need for cost of living adjustments.
 - Establish working conditions requirements including rest breaks, work schedules, and working hours.
 - Provide uniform training standards for agricultural workers, supervisory employees and nonsupervisory employees who are not agricultural workers.
 - Provide workplace health and safety requirements specific to agricultural workers that are no less protective than provided under the Oregon OSHAs Oregon safe Employment Act.
 - Create for cause termination standards.
- Before establishing standards ALWSB must evaluate and consider information to ensure that the standards meet or exceed prevailing market conditions. Specifies information that must be evaluated.

Section 5 – Uniform Training Standards

Provide uniform training standards for agricultural workers, supervisory employees and nonsupervisory employees who are not agricultural workers.

- Training standards must at least include information about adopted compensation and working conditions; rights and remedies for agricultural workers; duties and obligations of AWLSB; contact information for agency that have enforcement authority.
- Training must be provided annual to current workers and to new hires, before their start date.
- Training must be provided in the language the employer typically uses to communicate with employees.

BOLI must establish a process to allow a worker organization to become certified to provide the training. Specifies element that certification must include.

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Require public hearing and public input process for training standards.

Requires employer to keep records to demonstrate compliance with training requirements.

Section 6 – Petition for Rulemaking

Requires AWLSB to submit a petition for rulemaking, in accordance with ORS 183.390, to BOLI or Department of Consumer and Business Services (DCBS) to implement minimum standards established by AWLSB.

BOLI or DCBS must adopt the rules implementing the standard unless a determination is made that the standard:

- Is outside the statutory authority of BOLI or DCBS;
- Presented enforceability challenges;
- Is infeasible to implement; or
- Is otherwise unlawful.

Section 7 – Comprehensive Review

Requires AWLSB to conduct a comprehensive review of previously established minimum standards at least once every two years.

Section 8 – Reporting

Requires AWLSB to submit report to the legislative assembly by December 1 of each year on the AWLSB activities and recommendations for changes. Specifies requirements of the report.

Section 9 – Worker Protections

Establishes as an unlawful practice, under ORS 659A, for an employer retaliates against an agricultural worker who:

- inquires or exercises rights provided by this Act or rules adopted by BOLI or DCBS
- Participates in any process or proceeding or testifies in any proceeding under this Act;
- Participated in any training by certified worker organization.

Section 10 – For Cause Termination

Prohibits an employer from terminating the employment of agricultural worker unless the worker is terminated for cause. Provides exceptions to prohibition.

Requires all specified conditions be satisfied for an employer to terminate an agricultural worker for cause.

Employer has burden of establishing that termination for causes meets the conditions. The condition are:

- The employer has informed the agricultural worker, in the language most typically used to communicate with the worker, of the employer's policies or rules and performance expectations.
- Compliance with the employer's policies, rules or performance expectations is within the agricultural worker's control.
- The employer's policies or rules regarding performance expectations are reasonable and applied consistently.
- The employer undertakes a fair and objective investigation of the agricultural worker's job performance or misconduct.

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- The employer corrects an agricultural worker's conduct or job performance using a progressive discipline system.
- Prior to imposing any disciplinary measure, the employer has notified the agricultural worker of the infraction and provided the agricultural worker with an opportunity to respond to any allegation of misconduct or performance shortcoming, including an opportunity to provide evidence or explanation in defense of the agricultural worker.
- The employer has given the agricultural worker a reasonable chance to improve or correct the conduct or performance that led to the disciplinary measure.
- The employer has documented each infraction that gave rise to a disciplinary measure, including any evidence or explanation that the agricultural worker has provided in the worker's defense and any action taken by the agricultural worker to correct the conduct or performance, and provided such documentation to the agricultural worker, in the language most typically used to communicate with the worker, within one week of imposing the disciplinary measure.

Establishes as an unlawful practice, under ORS 659A, for an employer retaliates against an agricultural worker who:

- Opposes any prohibited practice.
- Files complaint or civil action alleging violation of just cause termination provisions.

Farmer labor contractors are jointly and severally liable with employer for violation of termination provisions.

Section 12 – Remedies

- Agricultural worker may file a complaint with BOLI or civil action.
- DCBS has same enforcement authority with respect to violation of rule adopted by Oregon OSHA.

Section 16 – 19

Specifies AWLSB terms; reporting initial report dues December 15, 2029; initial recommended minimum standards established in time for August 1, 2028 rulemaking petition.

Establishes operative dates.

Section 21

Emergency clause.

BACKGROUND:

A state or municipality may use a wage board to either recommend or establish wages, hours, and working conditions for an industry sector. Wage boards are typically composed of equal representation from industry employers and employees who must either together or with other members of the board achieve a majority to either adopt or recommend the adoption of wages, hours, or working conditions for the industry.

Wage boards may be advisory boards, making recommendations regarding minimum wages and working conditions to either a legislative body or executive official, such as a labor commissioner. A wage board may be a policymaking body, having the ability to adopt minimum wages and working conditions; establish training requirements; and establish minimum content and posting requirements for workers' rights.

Currently, Colorado and New York have boards related to the agricultural industry. The Colorado Agricultural Work Advisory Committee (AWAC) is an advisory body established in 2021. The AWAC is within the Division of Labor Standards and Statistics with 9 members who are appointed either by the Director or the Commissioner of Agriculture and who serve 4-year terms:

- 2 members who have worked as agricultural workers.

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- 2 members who are advocates of workers' rights.
- 3 members who represent agricultural employers.
- 2 representatives from the Migrant Farm Worker Division of Colorado Legal Services.

The AWAC must:

- Analyze the wages and working conditions of agricultural workers and report its findings and any legislative recommendations to the legislature.
- Annually report its progress, findings, and legislative recommendations to specified legislative committees.

The AWAC must annually report its progress, findings, and legislative recommendations to the appropriate legislative committees.

The New York Farm Laborers Wage Board (FLWB) was established in 2019 to require the Industrial Commissioner to appoint the FLWB to recommend successively lower overtime work thresholds and phase-in dates. The membership was appointed by the Commissioner and must include:

- 1 representative of the farm bureau.
- 1 representative of the N.Y. AFL-CIO.
- 1 member of the general public, who is the chairperson.