

HB 2548 -3 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, 4/9

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: Fiscal lite

Revenue impact: Revenue lite

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Replaces the measure.

Establishes 13-member Agricultural Workforce Labor Standards Board (board) 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.

Detailed Summary:

Section 1: Definitions

Section 2 – 3: Agricultural Workforce Labor Standards Board (board)

Establishes Agricultural Workforce Labor Standards Board (board) 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.

Board consists of 13 members appointed by the BOLI Commissioner. The composition is as follows:

- Two representatives of agricultural employers
- Two representatives from organization that represent interests of employers of agricultural workers.
- Two agricultural workers.
- Two representatives from organization that represent interests of agricultural workers.
- Two representatives of BOLI enforcement divisions, one from Civil Rights Division and one from Wage and Hour Division
- Two people who represent Oregon OSHA
- One person with legal knowledge and expertise in laws related to agriculture or civil rights law

Specifies that members serve 4-year terms. Specifies quorum and voting requirements.

Requires BOLI Commissioner to appoint executive director. Permits Executive Director to hire staff.

Members are eligible for compensation, as determined by the Board, but at minimum receive per diem, that is not less than \$151 for expenses member incurs.

Board meetings 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 Board

Requires board to establish minimum standards for agricultural workers that are designed to ensure the health and welfare of workers.

- Prohibits board 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.
 - Require 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.
- Requires board evaluate and consider information to ensure that the standards meet or exceed prevailing market conditions before establishing minimum standards. Specifies information that must be evaluated.

Section 5: Uniform Training Standards.

Requires board establish recommended uniform training standards for agricultural workers, supervisory employees and nonsupervisory employees who are not agricultural workers.

- Require training standard at minimum include information about adopted compensation and working conditions; rights and remedies for agricultural workers; duties and obligations of board; contact information for agency that have enforcement authority.
- Requires employers to:
 - Ensure training is provided annually, without the loss of time or pay.
 - Provide to new employees within 5 days of start date.
 - Provide in the language the employer typically uses to communicate with employees.
 - Provide training by certified worker organization.

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

Require board hold at least one 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 board 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.

Requires BOLI or DCBS to 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.

Requires BOLI or DCBS to enforce and implement standards to best of ability within biennial budget, if legislative appropriation is less than what is necessary for implementation. Require BOLI or DCBS to submit revised budget request to Legislature, if standard become operative during session, or submit request to the Emergency Board, if standard becomes operative during interim.

Section 7: Comprehensive Review

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

Becomes operative January 1, 2029.

Section 8: Reporting

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

Becomes operative January 1, 2031.

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.

Becomes operative January 1, 2029.

Removes For Cause Termination

Section 11: Remedies

Permits an agricultural worker to alleging a violation to file a complaint with BOLI. Permits BOLI to assess civil penalty of \$1000 per violation, in addition to other penalties provided by law.

Provides that DCBS has same enforcement authority with respect to violation of rule adopted by Oregon OSHA.

Section 12: Investigative authority

For purpose of determining facts related to the implementation of and compliance with minimum standards established by the board, the BOLI Commissioner may exercise existing statutorily prescribed investigative authority including issuing subpoenas, administering oaths, obtaining evidence and taking testimony.

Section 13: Budget Requests

Requires BOLI and DCBS to request budgetary authority necessary to carry out duties and powers of the Act including implementation and enforcement of minimum standards.

Section 14: Civil Action

Permits an agricultural worker to alleging a violation of minimum standards or for retaliation to file action in circuit court.

Becomes operative January 1, 2029.

Section 15: Initial Terms

Staggers term lengths for the appointments of initial board members.

Section 16: Timeline for Initial Standards

Requires board establishes initial recommended minimum standards no later than August 1, 2028 petition.

Section 17: Initial Report

Require board submit initial report to interim legislative committees on business and labor by December 15, 2029. Specifies contents of initial report.

Section 21: Emergency clause

Fiscal impact: Fiscal lite

Revenue impact: No revenue impact

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.
- 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.