

## HB 1398 would add costs and reduce work opportunities for legal migrant workers

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### Key Findings

1. **HB 1398 and SB 5438 would make farmers pay a state fee for participating in a federal program.**
2. **The H-2A program provides legal means of employment for migrant workers, giving them the dignity of earning a good living for their families.**
3. **The H-2A program is a federal program and any budgetary shortfall on a state-level should be addressed through a federal budget increase request. The federal H-2A program is already a costly and time-consuming solution to a worker shortage. By adding a state fee to the application process, legislators are pricing agricultural employers out of legal work visas for migrants.**
4. **HB 1398 and SB 5438 could limit the ability of agricultural employers to hire enough legal workers to raise and harvest their crops.**

### Introduction

HB 1398, and its companion bill SB 5438, would make it harder for farmers in Washington state to hire legal, seasonal workers to harvest food crops, support their community, and provide much-needed income for migrant families.

The federal H-2A visa program was established in 1986. It provides a means by which U.S. employers can hire foreign nationals to fill temporary agricultural jobs.<sup>1</sup> Before being approved to hire H-2A workers, employers must show there is a shortage of U.S. workers available to fill the vacant positions.

### The success of the H-2A worker program

Migrant workers use the H-2A visa program to find legal employment to support their families. In 2018, Washington state employers hired 24,658 workers through the program, an increase of 1,000 percent since 2007. The successful program is effective, sustainable, and popular with workers.

The program enhances dignity and respect for workers, because the program brings migrants “out of the shadows” to participate in the legal economy. Washington’s H-2A workers make more than \$15.00 an hour, the highest rate under the program in the country.

The American Farm Bureau Federation notes, “where American workers are unwilling or unavailable, workers from other countries have provided crucial support to American agriculture.”<sup>2</sup> H-2A workers fill the void left by U.S. workers and provide a necessary backstop

1 <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>

2 The American Farm Bureau Federation, Agriculture Labor Reform, <https://www.fb.org/issues/immigration-reform/agriculture-labor-reform/>

for employers in Washington state and around the country, while also earning a good living.

In addition to earning a good wage, H-2A workers are provided housing, transportation, and free medical care.<sup>3</sup> The H-2A program is successful public policy because it is based on trust, mutual respect, and personal relationships. Employers know that, regardless of where workers are from, domestic or migrant, all employees must be treated equally.

## Proposed legislation

HB 1398 and its companion bill in the 2019 legislative session propose the creation of the Office of H-2A Compliance and Farm Labor through the Employment Security Department (ESD). The new office would include an addition of 14 full-time employees to the ESD whose duties would include conducting field checks, field visits, training and outreach, and fee collection in coordination with the departments of Labor and Industries, Health, and Agriculture.

The ESD office would be funded with application fees collected from Washington state employers who use the H-2A program.

The legislation also proposes the creation of an advisory committee comprised of nine people, four of whom would represent the interests of agricultural employers, four of whom would represent the interests of agricultural workers, and one, non-voting ESD staff member. The primary tasks of the committee include providing comment on rulemaking, policy, implementation of the ESD program, and other issues as determined by the committee.

## Legal immigration and farm labor

By offering a work visa to willing, able, and capable workers, H-2A is supporting the best part of the American Dream: the chance for a better life. H-2A farm labor recruiters have heard countless stories from H-2A

workers about how they benefitted from the program.

One man reported he worked for the same employer for nearly 20 years and made enough money to buy a home, land, and cattle of his own in Mexico. At the conclusion of his time working under an H-2A visa, he headed home to work his own land and to start a small business shipping produce in his local area.

## Federal program, state funding

HB 1398 and SB 5438 would make people pay a state fee for participating in a federal program.

If passed, the legislation would make Washington the only state to require a fee for the program. Currently the H-2A visa program is administered by federal agencies including the U.S. Department of Labor and the State Department.

The current program costs approximately \$766 per worker in application fees. In 2018, that alone represents an \$18.8 million investment in the hiring process of H-2A workers by agricultural employers in Washington.

The proposed legislation notes a \$300,000 stipend received annually from the federal government to take care of administration of the program on a state level. In 2018, the state proposed a fee structure for H-2A worker applications of \$1,000 per application plus \$100 per worker up to 100 workers and \$50 per worker for every worker thereafter.

The current iterations of both bills have removed that proposed fee structure and have replaced it with an annual rate-setting mechanism that would be employed by an advisory group.

At a recent conference in our state, a farm labor advocate from North Carolina, previously the top applicant for H-2A workers in the United States, noted the current costs of the H-2A program are putting some farmers out of business.

If the funding provided by the federal stipend is not enough to sustain the state

<sup>3</sup> Employment & Training Administration: [H-2A Certification for Temporary or Seasonal Agricultural Work](#). 28 November 2007. U.S. Department of Labor, Washington, D.C. 2 December 2007, <https://www.foreignlaborcert.doleta.gov/h-2a.cfm>

administered portions of the program, including surprise and planned housing inspections, surprise and planned field visits, and other office tasks, the state should be lobbying Congress for an increase in funding, not assessing farmers in Washington additional fees.

## Getting farm work done

The H-2A program is a success for employers and workers. The Immigration Reform and Control Act of 1986 made H-2A visas available to offset the anticipated shortage of agricultural workers, a far-sighted policy that is working as intended.<sup>4</sup>

Farmers who want to hire an H-2A worker must first advertise and take referrals for domestic workers. Only after a labor shortfall has been identified can employers start the H-2A recruitment process. It is important to protect all groups potentially affected by farm labor rules: employers, legal U.S. workers, and legal foreign workers.

The U.S. Department of Labor Wage and Hour Division notes agricultural employers may only apply for H-2A worker visas after employers, "... have initially attempted to find U.S. workers to fill these jobs."<sup>5</sup>

Beyond the application fees and wages paid by agricultural employers, there are additional costs associated with the H-2A program. Agricultural employers must cover the travel needs of their H-2A employees and provide Department of Health-approved housing throughout the duration of the employees' contracts. Also, while H-2A employees are actively working, agricultural employers must provide for their transportation needs for any errands they may need to attend to off-farm.

## Conclusion

HB 1389 and its companion bill pose several problems for legal migrant workers, farmers, and the general public in Washington. The legislation works against hiring legal migrant workers, forces agricultural employers to consider hiring fewer employees, and includes burdensome rules that harm the prosperity of the state.

The H-2A visa program is a federally operated program. By looking to assess state-only application fees, the program becomes too costly for Washington agricultural employers to apply for the opportunity to hire legal migrant workers. If the ESD is struggling to fund its portion of H-2A assigned duties, it should be requesting a Congressional order to increase funding the program nation-wide.

Legal migrant workers are afforded the dignity of earning a good living for their families through the H-2A program. The opportunity to work legally gives migrants a sense of pride in their work and in their communities.

H-2A visas provide agricultural employers a legal means to raise and harvest their crops on an annual basis. Agriculture provides approximately \$10.6 billion to the economy of Washington state.

Both pieces of legislation will set Washington back in both the short and long terms, by forcing migrant workers seeking legal employment to search out other means of employment, and by adding state-only fees to a federal program. The legislation will price some agricultural employers out of the ability to hire enough legal workers to raise and harvest their crops.

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- 4 Temporary worker programs: Introduction. Working Immigrants. Jan. 12, 2013. [http://www.workingimmigrants.com/2013/01/temporary\\_worker\\_programs\\_intr.html](http://www.workingimmigrants.com/2013/01/temporary_worker_programs_intr.html)
- 5 U.S. Department of Labor Wage and Hour Division, H-2A: Temporary Agricultural Employment of Foreign Workers, Overview. [https://www.dol.gov/whd/ag/ag\\_h-2a.htm](https://www.dol.gov/whd/ag/ag_h-2a.htm)