

Proposal to expand ODA authority draws no objections

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Oregon’s farm regulators encountered no objections to a bill that would authorize them to conduct on-farm inspections and enforce a federal food safety law.

The Oregon Department of Agriculture has asked lawmakers to grant it the ability to implement the Food Safety Modernization Act on behalf of the federal government, though the agency remains unsure it will actually use that authority.

Under Senate Bill 18, ODA officials could inspect farms at the behest of the U.S. Food and Drug Administration to ensure compliance with food safety standards for raw produce, among other provisions.

Last year, the Oregon Board of Agriculture — an advisory panel overseeing the agency — decided ODA shouldn’t seek federal money for on-farm inspections until it became clearer how FSMA enforcement would be carried out.

The ODA has nonetheless obtained \$3.5 million in FDA grant money for FSMA education and outreach over five years, which will likely involve hiring three staff members, said Stephanie Page, the agency’s food safety and animal health director.

At this point, though, the ODA is contemplating cutting inspections of food manufacturers conducted on FDA’s behalf to catch up on state food safety inspections.

Any on-farm inspections and enforcement related to FSMA would be contingent on federal funding, but ODA has proposed SB 18 to confirm it has the necessary statutory authority.

The proposal drew no opposition from the public or members of the Senate Environment and Natural Resources Committee.

The committee’s chair, Michael Dembrow, D-Portland, said he planned to soon schedule a work session to vote on the bill.

Several other proposals related to ODA regulations have recently gained traction in the legislature, including:

- House Bill 2364, which restores the agency’s ability to mediate among farmers of genetically engineered, conventional and organic farms. A program to mediate conflicts over cross-pollination and similar issues was created in 2015, but another bill unintentionally removed ODA’s authority to oversee it. The House voted unanimously to approve HB 2364, which corrects the mistake.

- House Bill 2256, which clarifies that ODA can regulate nutritional supplements as food. While the agency already licenses and inspects manufacturers of such products, statutory language wasn’t clear that ODA can regulate them. HB 2256, which formalizes this authority, has unanimously passed the House.

- House Bill 2255 aligns language regarding ODA’s authority to regulate pasteurized milk with federal rules. The bill has unanimously passed the House.

- House Bill 2254 exempts Oregon produce headed for foreign markets from labeling requirements. Currently, such crops must be labeled for sale before being shipped overseas, complicating the export process. The House has unanimously approved HB 2254, which allows commodities to be shipped without labels and then labeled in the destination country.

Washington may reach 15,000 H-2A workers this year

By DAN WHEAT
Capital Press

OLYMPIA — Farms and orchards will bring as many as 15,000 H-2A-visa foreign farmworkers to Washington this year, the head of the WAFLA farm labor association predicts.

Of that, WAFLA expects to bring in about 12,000, and the remainder will come through other agencies, WAFLA director Dan Fazio said.

WAFLA helped Washington growers hire 10,527 H-2A farmworkers last year.

The deadline for 2017 applications is April 21. Last year, there was no deadline other than 60 days before a grower wanted the workers, but demand has increased enough this year that WAFLA needs more time, Fazio said.

By the end of March, the organization will have hired 3,000 H-2A workers for this year and it will probably reach 12,000 before year’s end, Fazio said.



Dan Fazio

“The state’s seasonal farm labor shortage continues to increase but we’re hopeful we won’t see the same level of processing delays by government agencies this year that we saw last year,” he said.

The U.S. Department of Labor and U.S. Citizenship and Immigration Services delayed processing H-2A applications nationwide last year, resulting in growers in other states suing the government, Fazio said.

USCIS has said it will cut its processing time from 30 to 15 days this season and the Trump administration likely will expedite agency processes, he said.

A total of 13,641 H-2A workers were hired in Washington in 2016 and WAFLA hired 77 percent of them. A couple large tree fruit companies and masLabor, a Virgin-

ia-based competitor, hired the rest. The total may be 15,000 this year, Fazio said.

The nonprofit WAFLA grossed \$8.2 million in income in 2016 with \$7.7 million in revenues from growers for H-2A workers. That’s up 17 percent from \$6.5 million total income in 2015, according to WAFLA’s annual report.

WAFLA dominates in Washington because as a nonprofit it can offer more services than for-profit agents can offer, according to the annual report.

Nationwide, the H-2A program continues to expand at about 15 percent a year as the farm labor shortage increases across the country, the report states.

In 2016, WAFLA members in Washington, Oregon, California, Idaho and Nevada employed H-2A workers from Mexico, Jamaica, Haiti and Dominican Republic.

The non-agricultural H-2B

program allows employers to petition for workers in packing houses, lawn care, forest work and hospitality. WAFLA filed four H-2B applications for about 150 workers in 2016 and has filed five so far this year for about 150 workers.

DOL and USCIS created “devastating” processing delays of applications in 2016 as the Obama administration, a friend of labor unions, didn’t like the H-2A program, Fazio said. WAFLA met with congressional staff, agencies, wrote letters and worked to correct delays at the state and federal level.

WAFLA is the only H-2A provider nationwide this year offering growers a guarantee of worker arrival on the date of need, Fazio said. So far, he said, about \$2,000 has been refunded to one grower for failing to meet date of need.

In an effort to recruit more domestic workers, WAFLA will hold job fairs in

May in Pasco, Granger and Wenatchee.

WAFLA also is proceeding with farmworker housing projects in Okanogan and Chelan.

At the organization’s Feb. 23 labor conference, Fazio recognized John Warling, co-owner of Mar-Jon Labor, an Othello labor contractor, who founded WAFLA with Fazio but is now retiring from the board.

“I was a lobbyist in 2006 at the Washington Farm Bureau and we had a big labor shortage. I said we have to do something. The Farm Bureau said it was way too risky to get involved in H-2A. So I called John Warling and he said you write a check for \$25,000 and I’ll write a check for \$25,000 and we will start an LLC (limited liability company),” Fazio said. “That was the start of the Washington Farm Labor Source, now WAFLA, and now we have 750 members.”

Oregon farmers oppose ‘show-up pay’ proposal, citing unpredictable weather

Bills would require compensation for canceled or shortened shifts

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Oregon farmers would dodge a key requirement of two bills aimed at improving schedule predictability for workers but still face a “show-up pay” requirement for canceled shifts.

Under House Bill 2193 and Senate Bill 828, large employers in the retail, food service and hospitality industries would have to provide workers with additional compensation if their schedules are changed with less than two-weeks’ notice, among other provisions.

Proponents say the bills are necessary because workers in these sectors often contend with schedule disruptions that prevent them from pursuing an education, obtaining adequate childcare or even getting sufficient sleep.

Critics say it’s unrealistic for employers to plan two weeks ahead for canceled



Mateusz Perkowski/Capital Press

Workers at Rogue Farms pull hop vines onto a truck as they’re cut from trellis wires in this file photo. Oregon farm employers are objecting to legislation that would require them to pay workers when shifts are canceled or shortened because of bad weather.

events, family emergencies, unforeseen worker departures and other incidents that can upend schedules.

While agriculture isn’t included in the two weeks’ notice requirement, farmers would nonetheless have to compensate workers who show up for a shift that’s shortened or canceled with less than 24-hours’ notice.

The employer would then

pay workers at their regular wage for the missing hours, or four hours, whichever is less.

Farmers have objected to this provision because foul weather can unexpectedly delay harvests or other operations, so requiring “show-up pay” would unreasonably impose a heavy financial strain.

“Weather plays a big role and we have no control over this,” said Anne Krahrmer,

whose family raises blueberries in the Willamette Valley, during a March 6 hearing on HB 2193.

Krahrmer said she closely watches weather forecasts and communicates with workers, but has nonetheless been forced to cancel berry-picking after only an hour or two due to rain.

If she had to pay 150 workers an average of \$15 for each

of the four hours they didn’t harvest fruit, the cost would come to \$9,000 for a single day.

“It would only take a few days to put me out of business at this rate,” Krahrmer said.

Apart from “show-up pay,” growers are concerned about provisions related to a worker’s right to request a flexible schedule, said Jenny Dresler, state public policy director for the Oregon Farm Bureau.

Employers must keep records of every conversation with workers about requested schedule changes, creating another unrealistic paperwork obligation, she said.

“If those conversations are happening out in the field, that’s really absurd,” Dresler said.

Under the bills, interfering with a worker’s right to request schedule changes would be considered retaliation, an unlawful employment practice that’s penalized by the Oregon Bureau of Labor and Industries.

The Farm Bureau is concerned that “interfering” can be interpreted too broadly to accuse employers of retaliation, Dresler said. “It sets up a ‘gotcha’ for small business.”

Washington Senate trims, passes piece-rate bill

Measure goes to Democratic-led House

By DON JENKINS
Capital Press

OLYMPIA — A bill to settle back wage claims spawned by a Washington Supreme Court ruling has passed the state Senate, but leaves unanswered how piece-rate farmworkers might be paid in the future for moving ladders, attending meetings and other “down time.”

A watered-down Senate Bill 5720 emerged from the Republican-led chamber Friday by a 28-18 vote, picking up a handful of Democratic votes after it was shorn of its forward-looking element.

The bill would still provide growers with a formula for retroactively paying piece-rate workers for rest breaks for the three years before the court’s 2015 Sakuma decision.

The ruling upset longstanding pay practices and led to more class-action lawsuits seeking to expand the decision to other times that workers are on the job but not doing piece work, such as picking and pruning.

Originally, SB 5720 proposed that growers pay piece-rate workers 108 percent of the state’s minimum wage for down time. The provision could have provided some protection from the lawsuits, which also could result in growers paying fines and hefty attorney fees.



Courtesy of Washington Senate Republicans

Washington state Sen. Brad Hawkins, R-East Wenatchee, says he hopes slimmed-down legislation on piece-rate pay for farmworkers will gain favor in the Democratic-controlled House.

The Washington State Tree Fruit Association championed the bill, which ran into opposition from labor groups and some Democrats.

The bill’s prime sponsor, Sen. Brad Hawkins, R-East Wenatchee, said Monday the legislation was scaled back to address only back pay for rest breaks in the face of “political realities.”

“There was significant opposition to the bill before,” he said. “We’re hoping to pick up momentum as the bill heads to the House of Representatives.”

A bill similar to Hawkins’ original measure was introduced in the Democratic-led House, but never received a hearing from the House Labor and Workplace Standards Committee, likely the next stop for the Senate bill.

Absent legislative action, the state Supreme Court probably will answer the

question of whether piece-rate workers will be paid separately for down time.

U.S. District Judge Salvador Mendoza Jr. has referred the question to the state court. Mendoza also asked the court to decide how down-time compensation should be calculated. In the Sakuma Brothers Farms case, the Supreme Court said piece-rate workers should be paid for 10-minute rest breaks based on how much they would have made by continuing to work.

Mendoza’s referral stems from a lawsuit filed against the Dovex Fruit Co. of Wenatchee by the Terrell Marshall Law Group, a Seattle firm that participated in the suit against Sakuma Brothers Farms, a berry company based in Skagit County.

The law firm estimates it’s representing more than

800 Dovex workers, according to court records. Another suit filed by the firm against the Auvil Fruit Co. of Orondo, Wash., could involve more than 1,000 workers.

SB 5720 would allow growers to settle the retroactive claims by paying workers 4.35 percent of their gross earnings, plus 12 percent annual interest. The pay is in line with California’s law on retroactive pay for farmworkers.

“I’m concerned about the legislation because it takes away rights workers already have under the Sakuma decision,” said Marc Cote, an attorney with the Terrell Marshall Law Group. “People don’t need this legislation to pay workers appropriately.”

A spokesman for the tree fruit association said the group still supports the bill as passed by the Senate.

Speaking on the Senate floor, Lake Stevens Democrat Steve Hobbs said that SB 5720 would be a quicker and surer way to get workers money than litigation.

Hobbs, one of four Democrats to vote “yes,” said the amended bill was “watered down to a point that we all agree on, which is workers deserve to be paid.”

“Right now there are lawsuits trying to get this money, but here the workers are going to their money,” he said.

Sen. Maralyn Chase, D-Shoreline, urged lawmakers to stay out of the issue.

“This is inserting the Legislature into a farmworkers’ dispute,” she said.

Officials issue alert after snowmelt flows off dairies

By DON JENKINS
Capital Press

Melting snow breached a berm around a field of triticale March 1 in Yakima County, releasing water into a compost pile at a nearby dairy and then flooding at least one home with water that may have been tainted with manure, sources said March 2.

The Washington Department of Health issued a warning that residents of Outlook, an unincorporated area 12 miles west of Sunnyside, should use bottled water for drinking, brushing teeth, washing dishes and food preparation until further notice.

The breach occurred as rising temperatures melted snow at DeRuyter Brothers Dairy, dairy owner Genny DeRuyter said.

The state Department of Agriculture confirmed that there was no manure in the field. But the water flowed across a road and into compost at the Snipes Mountain Dairy. Efforts to reach the dairy March 2 were unsuccessful.

Members of one family in Outlook reported water entering their home, while three other residents reported standing water on their property, according to WSDA.