



WASHINGTON FARM BUREAU
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LegisLetter

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Activities of the Legislature affecting farmers and ranchers in Washington state

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**Get Retro Bill Faces Resistance in the House
*This Session's Worst Anti-Business Bill***

While the assault on business continues in the Legislature, the "Get Retro" bill, [Engrossed Second Substitute Bill 6035](#), sponsored by Senator [Jeanne Kohl-Welles \(D-Seattle\)](#), is facing tough sledding in the House.

Retrospective rating programs are contracts between the Department of Labor and Industries (L&I) and sponsoring organizations like Farm Bureau. If the sponsoring organizations are able to increase workplace safety and limit the frequency and severity of workers' comp claims for their employer members, the group may qualify for a refund. Most groups, like Farm Bureau, provide the workplace safety services for members, but get the majority of their payment only if the group achieves a refund. It is an incentive-laden contract.

ESSB 6035 would limit how an association that offers a retrospective program could spend any refund it might earn. The reason is obvious: proponents of this legislation want to silence the opposition by muzzling business groups.

The principal proponent of ESSB 6035 is the trial lawyers, probably the most powerful special interest group in Olympia today. It is a mystery to many Legislators why trial lawyers would be pushing this bill so hard, but that is the case.

This week, the Legislature received a thoughtful analysis by one of the state's most learned constitutional attorneys, Bruce Johnson, stating that the bill is likely unconstitutional. According to the letter, "ESSB 6035 is contrary to our Constitution, and to the marketplace of ideas that it promotes, because it would undermine the First Amendment rights of individuals and companies. . ."

Also this week, the House Commerce and Labor Committee held a hearing, attended by approximately 50 Farm Bureau members. Committee members heard loud and clear that "Retro Works."

During his testimony on behalf of Washington Farm Bureau, First Vice President Britt Dudek called attention to the packed hearing room, asking members of Farm Bureau to stand. Nearly everyone seated in the gallery rose to their feet.

Likening ESSB 6035 to the McCarthy era, Dudek said, "It is positively un-American to cut off our speech. And make no mistake that is exactly what this bill does."

Rick Anderson, a Farm Bureau member from Sakuma Brothers Farms in Burlington, testified that Senator Mary Margaret Haugen, one of the original sponsors of the bill, voted against Senate Bill 6035 when it came time for a vote. Regarding her change of heart, Haugen wrote in an e-mail to Anderson that although she has concerns about RETRO programs, she "no longer believed that SB 6035 is the right way to address those issues."

The showdown for ESSB 6035 will likely come in the next two weeks. The vote will be very close. In the meantime, please check www.wsfb.com for any updates or calls to action.

H-2A Rules Are Working, but DOL Moves to Rescind

On December 18, 2008, the Bush administration published final rules that changed the H-2A program that enables farmers to recruit foreign workers when there is a shortage of legal domestic workers. Although the changes still left farmers in the position of having less favorable rules than non agricultural seasonal employers like the landscape industry, the changes more closely aligned the programs.

Now the federal Department of Labor (DOL) is moving to rescind those rules. The DOL action is highly irregular and may be illegal. DOL is providing ten days notice for interested parties to comment. The standard comment period is 30 days. In addition, DOL is not allowing stakeholders to comment on its proposed rules, which are a verbatim re-publication of the old H-2A rules that penalized farmers, and did not work.

According to the state Employment Security Department (ESD), the new rules were extremely popular with agricultural employers. Through March 20, ESD states that it

received 18 applications for the H-2A program, as compared to six during the same period in 2008. And four of those applications were first time users of the program.

Washington Farm Bureau submitted detailed comments urging DOL to wait until the end of the season to examine the rules. Why would anyone want to rescind a program that appears to be working for everyone -- farmers and domestic workers alike? We've already seen that more domestic workers have been hired under the new this year.

The new H-2A rules issued last December were opposed by the United Farm Workers (UFW), primarily because the rules allowed farmers to pay workers at the prevailing wage for the job they needed, rather than the "Adverse Effect Wage Rate," a compendium of all wages for agricultural workers in a region that is historically 20 percent higher than the prevailing wage.

All other guest worker programs -- from high tech down to the landscape industry -- use the prevailing wage, and the higher wage rate, which DOL seeks to reinstate, is simply not fair.

Farm Bureau's comments to the proposed regulation are posted on our website.

Workers Comp De-form: More Anti-business Legislation

The last time that the state's workers' compensation laws were overhauled was 1988, and business groups have been pushing, without success, for a major workers' comp reform. Instead, each year the Legislature adds one or two new laws that make the system worse for employers.

This year is no exception.

The principal workers' comp bill being considered is [House Bill 1402](#), which would make it nearly impossible for an employer to contact a treatment provider once a worker filed an appeal. HB 1402 is sponsored by [Representative Brendan Williams \(D-Olympia\)](#). It passed the House by a vote of 55-42. All Republicans voted against the measure, and several Democrats -- but not enough to stop this bad legislation -- joined them.

The bill is being pushed by the powerful trial lawyers, who are large political contributors and right now, arguably the most powerful special interest group in Olympia.

This bill has been around for several years, and up until now, it has been opposed by the governing agency, L&I. This year L&I removed its opposition, because trial lawyer proponents wrote an exception for the Agency. So now Agency personnel can contact doctors, but employers can't, if the bill becomes law.

The bill does contain an exception for employers as well. An employer can contact a workers' comp treatment provider, but cannot ask anything about the condition or conditions that are the subject of the appeal.

This bill will cause mass confusion and the result will be that treatment providers will just stop talking to employers -- precisely what the proponents seem to want.

Employers need to speak to treatment providers to discuss light duty and back to work programs. It's hard to understand why the Legislature would seek to limit our contact with treatment providers about any condition dealing with a claim.

Thirty Days Left and Still No Budget

Friday, March 27, is day 75 of the 105-day regular legislative session, and neither the House nor the Senate has released its proposal for the 2009-2011 biennium operating budget.

The Senate is now expected to introduce its 2009 supplemental and 2009-11 biennial operating budget proposals sometime Monday, with hearings scheduled for much of next week. The actual budget bill should be available online sometime Monday. The House is said to be waiting for the Senate to release its bill, before unveiling its own.

Republicans in both chambers report they have been shut out of the budget-writing process by majority Democrats.

Interestingly, many fiscal committee meetings were cancelled this week as budget-writers worked behind closed doors on their respective budget bills.

AHP Battle Moves to the Budget

As reported earlier, [Rep. Eileen Cody's \(D-Seattle\) SHB 1714](#) died at cut-off on March 12. That bill would have directed the Office of the Insurance Commissioner (OIC) to study association health plans (AHPs).

Farm Bureau and other members of the Jobs & Health Care Coalition worked with Rep. Cody and her staff to craft a [striking amendment](#) to address our concerns about the release of proprietary AHP data and refocus the study to a retrospective review of the performance of both the small group and association health plan markets.

Rep. Cody now intends to offer language similar to the striking amendment as a proviso to the 2009-11 operating budget.

While Farm Bureau adamantly opposed HB 1714 and its first substitute, we have no objection to the new proviso language so long as it is modified to allow insurers whose AHPs cover 10,000 or fewer lives to jointly aggregate their data prior to submitting it to the OIC. OIC has agreed to that request and Farm Bureau expects it will be incorporated into the proviso text.

Farm Bureau appreciates the willingness and hard work of Rep. Cody and her staff to reach agreement on this issue.

Climate Change Bill Moves Ahead

Today, the [House Ecology and Parks Committee](#) voted to move the “Cap and Trade” bill [E2SSB 5735](#), sponsored by [Sen. Phil Rockefeller \(D-Bainbridge Island\)](#) out of committee with a couple of amendments.

While the amendments “improved” the bill slightly by directing further state activity on climate change take place within a stakeholder process, lost was the critical component that required an economic analysis of carbon policy. As the bill moves one step closer to a potential vote on the floor of the House, we strongly urge Legislators to count the costs before enacting any policy that will harm the businesses and citizens of our state.

Again we urge Legislators to not pass this measure because: (1) current law allows the conversation on this matter to continue; (2) we need to wait to see what the U.S. government chooses to do; (3) we cannot risk harm to our fragile economy; and (4) we need proof that such a program will actually help us deal with natural climate variability.

Bills of Interest

Please note that since some bills have “died” there are two versions of bill tracking posted on our website. Please check the file name and date to distinguish between the two. Since there is always a chance a bill may be “revived” we judiciously keep a copy of bill tracking as it was before cutoff, in addition to the active bill tracking list. Both are available at: <http://www.wsfb.com/issues/legisletter>.

Information Resources

Washington Farm Bureau: www.wsfb.com
Legislative Information: www.leg.wa.gov

Governor’s Bill Actions: www.governor.wa.gov
Legislative Hotline: (800) 562-6000