



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, October 17, 2019

Time: 11:00 a.m. to 4:00 p.m.

Location: JA Cherberg Building, JAC ABC Conference Room, 304 15th Ave SW, Olympia, WA 98501

Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Ramon Torres
- Erik Nicholson

Committee members absent

none

Non-voting agency representatives

- Kimberly Gierach
- Uriel Iñiguez
- Ignacio Marquez

ESD staff

- Joy Adams
- Sara Crosby
- Wendy Goldmark
- Rebekah O'Hara
- Larry Sheahan
- Dan Zeitlin

Summary

Welcome and introductions

ESD Policy Director Dan Zeitlin welcomed everyone and asked everyone in the room to introduce themselves. When introductions were complete, Uriel Iñiguez, Director of Community Relations from the Department of Labor and Industries, made the traditional meeting toast with slices of Washington-grown pears.

Agenda

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. There were no questions. (See Addendum I.)

Committee Charter

Dan Zeitlin led the discussion on approving the Office of Agricultural and Seasonal Workforce Services Advisory Committee Charter. He requested that everyone look over the second draft Charter and provide their feedback.

Igñacio Marquez asked, “What is the expectation regarding attendance and should it be in the Charter?” Rosalinda Guillen suggested, “If anyone does not feel it is worthwhile to attend, then they need to address the Committee and explain why.” Dan Zeitlin referred everyone to the Charter – Member Replacement.

Michael Gempler asked, “Are proxies addressed in the Charter?” Dan Zeitlin clarified that there is no proxy voting allowed in the provisions of the Open Public Meetings Act.

Jon DeVaney asked, “Do we need to specify when we have public comments, as we are about to vote on public comment with not hearing comment from the public on the matter?” Joy Adams referred everyone to the Public Comment section of the Charter. She clarified that we are only required to post the agenda on the website no less than 24 hours prior to the meeting. The Charter has been edited to address public comment at regular meetings.

A motion to approve was initiated and seconded. The Committee Charter was approved. (See Addendum II.)

Supplemental Procedures

Dan Zeitlin requested that everyone review the Supplemental Procedures and provide their feedback. Everyone found the procedures to be in good order.

A motion to approve was initiated and seconded. The Supplemental Procedures were approved. (See Addendum III.)

August 26, 2019 Meeting Minutes

Dan Zeitlin requested that everyone review the August 26, 2019 Meeting Minutes and provide their feedback. John DeVaney and Rosella Mosby requested minor changes. Changes were noted by Joy Adams.

A motion to approve was initiated and seconded. The August 26, 2019 Meeting Minutes were approved. (See Addendum IV.)

SB 5438 Implementation – H-2A Application Confidentiality October 2019

Rebekah O’Hara, the Chief Data Privacy Officer, reviewed the change to RCW 50.75.030(1) which states that “the H-2A application is not subject to chapter 50.13 RCW,” the statute governing Unemployment

Compensation privacy and confidentiality in the state of Washington. Previous to the statute change, ESD released redacted versions of H-2A applications (ETA 790 forms). Under the new law, un-redacted versions of the H-2A application will be distributed via the existing listserv after stakeholders have the opportunity to provide feedback. With no issues presented at the meeting, ESD will implement this change starting in November 2019.

A question arose to clarify that these forms had always been public when released on the USDOL website; the only change is that this information will now become public earlier in the process. (See Addendum V.)

It was requested that when implementing discontinuing redactions (with the exception of the employer FEIN) that ESD include a message in the e-mail that goes out to individuals on the listserv, with a disclaimer saying the ETA 790 may change upon review from ESD and USDOL, so that people seeing the initial submission of the unredacted ETA 790 do not assume it is the final version.

2020 Committee Meeting Schedule

Dan Zeitlin led the discussion on designating the committee meeting locations through the year 2020. The Committee members volunteered to host the meetings at respective locations throughout the year. The months of November and December 2020 were left open to confirm at a later date. (See Addendum VI.)

Committee Values and Expectations Facilitated Discussion

Sara Crosby, Lean Leader from the Office of Lean Engagement and Development at ESD, facilitated a discussion on values and expectations of the Committee. Together, committee members laid out ground rules and core values. Committee members also identified focus areas and highlighted problems and concerns in these key areas. (See Addendum VII.)

Agenda Items for Next Meeting

Suggested agenda items for the next Committee meeting are:

- Data Issues
 - *Migrant and Seasonal Farmworker (MSFW) workforce data availability
 - *Accurate information on compliance
 - *Stakeholder assurance that survey wage data is accurate
 - *Accurate counts of domestic workers

- Domestic Recruitment of Workers
 - *Labor market test
 - *Verification of barriers to agriculture employment from a worker perspective
 - *Electronic ads for farmworkers translated to Spanish
 - *Facilitating private or non-traditional partnerships between groups and farmers (i.e.: churches, displaced populations, youth groups, refugees)
 - *How processes might be improved
 - *Accurate representation of recruitment system/define current practices
 - *Identify specific instances of displacement of local workers by H-2A workers
 - *Make sure to hire local workers first

Closing comments

Dan Zeitlin thanked everyone for their active participation and for their commitment to this work, then ended the meeting.

2019 meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **November 22, 2019 – 11:00 a.m. to 2:00 p.m.**
WorkSource Yakima
1205 Ahtanum Ridge Dr, Suite A
Union Gap WA 98903

Addendum I
FINAL – October 17, 2019

Agenda

Agricultural and Seasonal Workforce Services (ASWS)
Advisory Committee

Thursday, October 17, 2019 | JA Cherberg Building, JAC ABC Room | 304 15TH Ave, Olympia, Washington
98501

Agenda Items

| Time | Topic |
|-------------|---|
| 11:00 am | Introductions <ul style="list-style-type: none">Welcome from Dan Zeitlin, Employment System Policy Director |
| 11:10 am | Approval of Charter, Supplemental Procedures and First Meeting Minutes |
| 11:30 am | Bill Implementation Update |
| 11:50 am | Determine Location of 2020 Meetings |
| 12:00 pm | Break – Distribute Lunches |
| 12:15 pm | Committee Values and Expectations Facilitated Discussion |
| 2:00 pm | Break |
| 2:15 pm | Committee Values and Expectations Facilitated Discussion Continued |
| 3:50 pm | Discuss Agenda Items for Next Meeting |
| 3:55 pm | Administration |
| 4:00 pm | Adjourn |

For more information, please visit the ASWS website at <https://esd.wa.gov/newsroom/Ag-committee>

Addendum II
FINAL – October 17, 2019

OFFICE OF AGRICULTURAL AND SEASONAL WORKFORCE SERVICES ADVISORY COMMITTEE CHARTER

PURPOSE

The Legislature declared it to be in the public interest to clarify the state's role in the H-2A temporary agricultural program to provide adequate protections for foreign and domestic workers and provide education and outreach opportunities to help growers maintain the stable workforce they need. The Office of Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee (Committee) is established to comply with the intent of the Legislature by advising the Employment Security Department (Department) on ASWS operations and the management of the Foreign Labor Certification program within the Department's purview.

GOALS

On issues and topics of interest related to the work of ASWS, the Committee is directed by the Legislature to:

- Provide comment on Department rule making and policy
- Provide comment on implementation of Chapter 441, Laws of 2019 and initiatives, and
- Study issues the Committee determines require consideration

The primary focus of the Committee's work shall be to advise on the ASWS budget and operations, as well as meeting the requirement to report to the governor and Legislature.

The Committee will advise the Department on the development of the Office of Agricultural and Seasonal Workforce Services, the coordination of all state agencies with regulatory authority over the agricultural workplace, and the ongoing operations of the Foreign Labor Certification program.

The Committee is required to submit a report to the governor and the Legislature by October 31st of even numbered years that:

- Identifies and recommends approaches to increase the effectiveness of the Department's recruitment process as part of the H-2A application. This report may include recommended changes to state law that would increase recruitment and hiring of domestic workers in agriculture in Washington,
- Analyzes the cost incurred by the Department to administer the H-2A and other farmworker programs, and
- Analyzes the amount of funds allocated by the federal government to administer the H-2A program and all other programs within the Department.

MEMBERSHIP

This Committee is made up of twelve members, as follows:

- Four voting members representing agricultural workers’ interests, one of whom is a farm worker;
- Four voting members representing agricultural employers, one of whom is an agricultural employer;
- One non-voting ex officio member representing the Employment Security Department who shall serve as chair;
- One non-voting ex officio member from the Department of Labor and Industries;
- One non-voting ex officio member from the Department of Health;
- One non-voting ex officio member from the Department of Agriculture.

At the time of this Charter’s creation, the following members have been appointed by the Commissioner:

- **Advisory Committee Chair- Employment Security Department:** Dan Zeitlin, Director, Policy, Data, Performance and Integrity Division
- **Agricultural Worker Rep.:** Michele Besso, Attorney, Northwest Justice Project
- **Agricultural Worker Rep.:** Rosalinda Guillen, Executive Director, Community to Community
- **Agricultural Worker Rep.:** Erik Nicholson, Vice-President, United Farm Workers
- **Agricultural Farmworker.:** Ramon Torres, President, Familias Unidas por la Justicia (FUJ)
- **Agricultural Employer Rep.:** Jon DeVaney, President, Washington State Tree Fruit Association
- **Agricultural Employer Rep.:** Michael Gempler, Executive Director, Washington Growers League
- **Agricultural Employer Rep.:** Delia Peña, Director of Orchard HR and H-2A, Zirkle Fruit Company
- **Agricultural Employer:** Rosella Mosby, Owner Operator, Mosby Farms
- **Department of Labor and Industries Rep.:** Uriel Iñiguez, Director, Community Relations
- **Department of Health Rep.:** Todd Phillips, Director, Environmental Health & Safety
- **Department of Agriculture Rep.:** Ignacio Marquez, Regional Assistant to the Director - Eastern/Central WA

MEMBERSHIP APPOINTMENT

TERMS

All members shall be appointed by the Commissioner to serve an initial term through December 31, 2020. Following the initial term, members shall serve staggered four-year terms following procedures set forth by the Committee. At the end of each term, members may either be replaced or re-appointed by the Commissioner. There is no term limit.

MEMBER REPLACEMENT

An opening on the Committee may occur due to a resignation or removal by the Commissioner for good cause. If there is an opening on the Committee during a member’s term, the Commissioner shall appoint a replacement member to fill the position as designated in this charter, and as outlined in C 441 L 2019.

MEMBER EXPECTATIONS

OPEN PUBLIC MEETINGS ACT

The Washington Open Public Meetings Act (OPMA) applies to the Committee. Members must comply fully with the OPMA.

MEMBERS COMPENSATION

The members shall serve without compensation but are entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060. The Committee may utilize such personnel and facilities of the Department as it needs, without charge.

COMMITTEE MEETINGS

MEMBER MEETINGS- CADENCE

The Advisory Committee conducts a variety of meetings. Each of these meetings are open to the public but are not meetings of the public. The purpose of the meetings is to conduct Committee business and to provide the members an opportunity to discuss issues with each other and with staff scheduled on the agenda. To clarify, we provide the following definitions of meetings:

Regular Meeting: This is a business meeting held on a scheduled date, usually the third Thursday of each month. If it is determined that a meeting is not necessary to conduct Committee business, meeting cancellation will be communicated.

Special Meeting: This is a business meeting held on a date other than a regularly scheduled meeting. Advance notice of regular Committee meetings is posted on the Employment Security Department's website, and available upon request.

MEMBER MEETINGS- QUORUM

The members agree that a quorum constitutes a simple majority of the total statutorily required number of voting members. The Chair and other Department representatives are not voting members. The Committee has eight voting members in statute. A quorum will consist of no less than five voting members (a simple majority of the total statutory number of voting members).

DECISION MAKING STRUCTURE

The members agree to use the *Robert's Rules of Order Newly Revised* to propose and agree upon decisions before the Committee. In the event of a conflict between this charter and Roberts' Rules of Order, the charter will control.

PUBLIC COMMENT

An opportunity for public comment will be scheduled during the Committee's regular meetings. Time limits for public comment will be established to ensure equitable time for each speaker and to ensure scheduled Committee business can be completed in a reasonable amount of time.

Citizens are invited to provide public comments to the Committee as designated on the meeting agenda. Time for public comments is limited to ensure that all who are interested have an opportunity to speak. A person initiating public comment will have a maximum of 5 minutes to present. Comments made by additional citizens on the same topic will be limited to 3 minutes per person and each person is allowed to speak once. A maximum of 30 minutes is allowed for public comment at the beginning of each meeting.

The Chair will strive to ensure that all perspectives have sufficient and equal opportunity to share with the Committee.

Addendum III
FINAL - October 17, 2019

Agricultural and Seasonal Workforce Services Advisory Committee
Supplemental Procedures

This document provides procedures to supplement the Charter guiding the actions of the Committee. This is a living document that may be modified with the approval of a majority of the voting members of the Committee. This document was last approved by the Committee on October 17, 2019.

QUORUM

Five voting Committee members shall be considered as constituting a quorum for the transaction of business.

MEETING CONDUCT AND ORDER OF BUSINESS

All Committee meetings will be conducted in an orderly and business-like manner using Roberts Rules of Order (Revised) as a guide, though the Committee may follow alternate policies and procedures when adopted by the Committee. The order of business will be that indicated in the agenda. Any additions or changes in the prepared agenda may be requested by a Committee member and must be approved by majority vote of the Committee members present.

All votes on motions and resolutions shall be by “voice” vote unless an oral roll call vote is requested by a member of the Committee in which case a majority of voting members present must vote in the affirmative for the Committee to approve the motion or resolution. All final actions taken by the Committee shall be open to the public.

An oral roll call vote of all voting members of the Committee is required for final acceptance and transmittal of the biennial report to the Legislature and Governor.

INITIAL AND SUBSEQUENT TERMS OF MEMBERSHIP

All members are appointed by the Commissioner to serve an initial term through December 31, 2020 and shall remain on the Committee after that time, with the Commissioner’s approval.

At the November 2020 Committee meeting, the voting members shall recommend to the Commissioner, by voluntary or random assignment, which members may serve a subsequent two-year term and which members may serve a subsequent four-year term subject to appointment by the Commissioner. Two representatives of agricultural workers and two representatives of agricultural employers shall be appointed to four-year terms, and the other two representatives of agricultural workers and two representatives of agricultural employers shall be appointed to two-year terms by the Commissioner. Each term shall begin on January 1, 2021. The two-year terms shall expire December 31, 2022, and the four-year terms shall expire December 31, 2024.

Following the initial staggering of terms as described above, members shall be appointed to four-year terms, beginning on January 1 of an even year and ending on December 31 of the second odd year. At the end of each term, members may either be replaced or re-appointed by the Commissioner. There is no term limit.

RESIGNATION OR REMOVAL OF MEMBERS

If a member wishes to resign their appointment before the end of their term, they must send the resignation in writing to the Employment Security Department Commissioner. The Commissioner shall then appoint a replacement member to fill the position for the remainder of the resigning member's term, appointing from a list of names provided by a recognized statewide organization as outlined in state law.

The Commissioner may remove a member from the Committee for good cause.

The Committee may request removal of a member for good cause. If the Committee wishes to pursue removal of a member, at least five members must sign a written letter to the Commissioner outlining the reasons for which the member should be removed. The Commissioner must determine if the Committee's request constitutes good cause. The Commissioner retains full authority to remove members, or to decline the Committee's request.

Addendum IV
August 26, 2019



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Monday, August 26, 2019

Time: 11:00 a.m. to 2:00 p.m.

Location: Employment Security Department, (ESD) Maple Park Building, Maple Leaf Room

Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Ramon Torres

Committee members absent

- Erik Nicholson

Non-voting agency representatives

- Uriel Iñiguez
- Ignacio Marquez
- Todd Phillips

ESD staff

- Joy Adams
- Wendy Goldmark
- Suzan LeVine
- Larry Sheahan
- Nick Streuli
- Dan Zeitlin

Summary

Welcome and introductions

Commissioner Suzan LeVine introduced herself, welcomed everyone and toasted with sliced apples. She asked the public to identify themselves and thanked them for engaging with ESD. ESD staff were introduced and offered to be of assistance throughout the meeting.

The Commissioner requested everyone's permission to put photographs of the meeting out on social media. There were no objections.

After making opening remarks (see Addendum I), the Commissioner asked each voting member of the committee, followed by the non-voting agency representatives to provide up to three minutes of remarks expressing their views of and expectations for this Committee.

- Michele Besso, Attorney at Law – Northwest Justice Project
 - Challenges with agency responses to various instances of abuse of H-2A program requirements.
 - Looking for a more effective collaboration between state agencies.
- Jon DeVaney, President – Washington State Tree Fruit Association
 - Challenges with additional growers participating in highly regulated program.
 - Looking for the committee to provide input and guidance on how we improve the system.
 - Rules not followed vs. rules being inadequate.
 - Observed that some issues will be beyond ESD's role.
- Rosalinda Guillen, Executive Director – Community to Community (C2C)
 - Moments before meetings, they practice a similar ceremony to what Suzi did with the apple.
 - At C2C they come to the table hopeful and optimistic.
 - This becomes a space where farmworkers can have equitable voice with discussions that lead to actions to better the situation for farmworkers and growers.
 - Understands the complexities between the federal and state with regard to the H-2A program.
- Rosella Mosby, Owner/Operator – Mosby Farms
 - First generation farm in Auburn/Pacific/Sumner/Orting – 350 to 500 acres spread over 25 miles.
 - Hand weeded/hand harvested.
 - Take great pride in being a farm of families.
 - As a farm owner, it takes a team to accomplish the harvest goals every year. Compete with lots of other industries for workers and facing huge challenges.
 - The impact of farms in our economy is huge.
- Michael Gempler, Executive Director – Washington Growers League
 - Executive Director of the WA Growers League deals exclusively with labor and employment issues for Washington growers.
 - Hope for the committee is to be able to develop an efficient unit of staff to administer the program and perform the duties.
 - Effective monitoring of H-2A employment conditions.

- Effective complaint system where the department is able to receive and respond to complaints.
- Concern from the industry that the office is larger than necessary.
- Hope to develop an improved and smoother working relationship with ESD on agriculture issues.
- Hope to have good open dialog with labor/gov reps to determine what the facts are regarding the conditions of ag employment. Also look to hear about referral and domestic recruitment issues.
- Producers are proud of what they do and want to continue to be proud of the working conditions and employment for their employees and want the program and industry to be respected.

- Ramon Torres, President – Familias Unidas por la Justicia (FUJ)
 - President of FUJ
 - Looking to learn more about the committee.
 - Been doing this job for 6 years and has seen a lot of abuse.
 - Now that farmworkers have a voice and they want to use it to make sure the program is used correctly.
 - In the strikes before there has been abuse and people detained wages - even someone who died.
 - Wants to see how the committee is going to help.
 - Want to make sure that local farmworkers are respected.
 - Appreciate that we don't want to have strikes and hopes this committee can help.
 - Appreciates the invitation and wants to be heard.

- Delia Peña, Director of Orchard HR and H-2A – Zirkle Fruit Company
 - Zirkle has participated in the program for 15 years.
 - Have the same goal - as employer how do we build relationships and ensure the flow of communication is appropriate.
 - People want to have a voice - how do we build that relationship and voice.
 - How do we come together and build a process that works for everyone.

- Ignacio Marquez, Director's Office – Washington State Department of Agriculture (WSDA)
 - We should expect miracles.
 - Been working on farmworker issues all his life.
 - Looking toward the trends and wants to help plan and transition.
 - No longer families picking - mostly males.
 - At WSDA they do pesticide training.
 - We are all part of the agricultural industry - we all eat. Do we want the cheapest apple or do we want the premium apple that is grown with care.

- Todd Phillips, Director of Environmental Health and Safety Office – Department of Health (DOH)
 - Manages Temporary Worker Housing (TWH) at DOH.
 - Plays a part in coordination - majority of TWH is H-2A related.
 - Hoping to listen and provide input to create a more effective program.
 - Goal for TWH is to provide oversight to ensure occupants are safe and healthy. Environmental public health is a major goal.

- Uriel Iñiguez, Director of Community Relations – Department of Labor and Industries
 - Lots of the conversations happening for years.
 - Has been dealing with this issue for years at Commission on Hispanic Affairs.
 - These agencies have worked together for a long-time.
 - Labor and Industries has jurisdiction of most of these programs.
 - Yes, this is a federal program but WA has an obligation.
 - Would like a way for agencies to coordinate better. We should be able to respond in a timely manner.

The Commissioner turned to Dan Zeitlin, Employment System Policy Director, who made brief welcoming remarks. Dan read a statement (see Addendum II), from Erik Nicholson, Vice-President of United Farm Workers, who was unable to attend the meeting.

The Commissioner closed her remarks requesting that all future meetings open by “sharing the fruits of our labor” with sliced apples, pears, or cherries, etc. The Commissioner turned the meeting over to Dan Zeitlin.

Dan Zeitlin introduced Nancy Krier from the Washington State Attorney General’s Office and turned the meeting over to her.

Open Public Meetings Act RCW 42.30 Training

Nancy Krier, from the Washington State Attorney General’s Office, conducted a PowerPoint training on the Open Public Meetings Act (OPMA) which was passed in 1971; requiring meetings to be open to the public, gavel to gavel. The complete PowerPoint presentation can be found [here](#).

Committee Charter

Dan Zeitlin led the discussion on approving the initial Office of Agricultural and Seasonal Workforce Services Advisory Committee Charter. A second draft was proposed. (See Addendum III.)

Committee Meeting Schedule

Dan Zeitlin led the discussion on approving the committee meeting schedule through to December 2020. The Committee agreed to meet on October 11, 2019 from 11 am to 4 pm in Olympia with October 17, 2019 as an alternative date if the 11th does not work for Erik Nicholson. The Committee agreed to meet from 11 am to 2 pm on November 22, 2019 in Yakima. The Committee agreed to meet on the third Thursday of every month in 2020 with the duration of meetings and locations to be determined.

Agenda Items for Next Meeting

Suggested agenda items for the next Committee meeting are:

- Final approval of Committee Charter
- Mechanism for seeking public comment outside meeting agenda
- Facilitated discussion gathering members points of view on issues and expectations for the Committee’s work.

Closing comments

Dan Zeitlin thanked everyone for their input and participation and ended the meeting.

2019 meetings

The remaining 2019 Agricultural and Seasonal Workforce Services Advisory Committee meetings are on:

- Friday, October 11th or Thursday, October 17th 11:00 a.m. to 4:00 p.m. in Olympia
- Friday, November 22nd 11:00 a.m. to 2:00 p.m. in Yakima

Addendum I
August 26, 2019**Opening Remarks by Commissioner Suzan LeVine**

- Good morning! I am Suzi LeVine the Commissioner of the Employment Security Department and I am so excited to welcome you to this inaugural meeting of the Agriculture and Seasonal Workforce Services Advisory Committee.
- Before getting started, can members of the public please identify themselves?
 - Thank you so much for taking the time to do your civic duty and engage with us today!
- Can staff from the Employment Security Department [Joy Adams, Wendy Goldmark and Larry Sheahan] also please introduce yourselves?
 - Thank you for all your hard work to make this day a reality.
- If you need assistance throughout the meeting with anything, my amazing team is here to support you.
- After my brief remarks I would like each voting member of the committee to my right and then left, followed by the non-voting agency representatives, to provide up to 3 minutes of remarks expressing their views of and expectations for this Committee.
- After that, I'll turn things over to Dan Zeitlin - who you all know is leading our effort to stand up this Committee and the Office of Agriculture and Seasonal Workforce Services. Dan will be serving as the ESD representative and Chair of the Committee.
- All Committee members have a personal folder in front of them and there are handouts in the back related to today's agenda, which includes an Open Public Meetings Act training, discussion and approval of the Committee charter, and discussion and identification of dates and locations for future meetings.
- Before we get started, as you know we put out a press release announcing the Committee members and this meeting. We would like to take pictures and continue to amplify this work to the public including through social media. Before doing that, I do want to be respectful of everyone's comfort level and ask if there are any objections?
- Any other questions about today's agenda?
- Then let's get started.
- On May 21, Governor Inslee signed Senate Bill 5438 establishing the Office of Agriculture and Seasonal Workforce Services and this associated Advisory Committee.
- I recognize and appreciate that issues related to the H-2A program, and agriculture labor more generally, are difficult and that, while this bill was ultimately approved with bipartisan support, the debate that proceeded its passage was contentious.
- I adhere to the philosophy that the only way to address hard problems is to run to them and not from them. That we are sitting here today is proves that!

- When we gathered for that signing, it filled me with a sense of hope to see employer and worker representatives standing side by side as we looked over the Governor's shoulder to breathe life into that bill with his pen! And now, that hope is joined with pride as I look around this room at many of the people who were there for that special moment.
- And, it gives me even greater hope kicking off this Committee less than one month since the bill became effective to begin charting out steps we can take that will allow us to work together to make gains for both agriculture employers and workers.
- Washington State has been recognized as the top state for doing business and the best state in which to work.
- Our goal with this effort is to ensure that applies, not just overall, but to the state's \$10 billion agricultural economy in particular. We want people to know that, when they purchase Washington grown products, they are buying products from a state with the best conditions for both agricultural employers and farmworkers.
- I so appreciate that agricultural workers, employers and state agencies here today are coming together-sitting side-by-side-to contribute to this goal. Thank you so much for choosing to spend your incredibly valuable time serving on this vital committee!
- The key goals of this Committee are clearly spelled out in the legislation and, as Chair of the Committee, I see ESD's role as convener and as the entity ensuring that we meet those requirements.
- HOW we work is just as important as WHAT work we do. So, it's important that you know our commitment to transparency, openness, and respect with this Committee - seeking advice as we stand up the Office of Agriculture and Seasonal Workforce Services.
- Our core objective is to produce a report to the Legislature and Governor in October 2020 that:
 - Identifies and recommends approaches to increase the effectiveness of the recruitment process as part of the H-2A application with an eye toward increasing the recruitment and hiring of domestic workers in agriculture in Washington; and
 - Analyzes the costs incurred by ESD to administer the H-2A and other farmworker programs, as well as the amount of funds allocated by the federal government to administer the H-2A program and related programs that support farmworkers.
- As this Committee proceeds, it must remain focused on that task at hand.
- Yet, ultimately, I hope and, in fact, expect more from this Committee.
- At times Committees such as these become forums for discussion, sometime contentious discussion, but no action.
- Here at ESD, I believe we have demonstrated what Advisory Committee success looks like with the Employment Security Advisory and Paid Family Medical Leave Committees playing critical roles supporting our mission.

- With this Committee, with you as the nominated representatives to serve on it, and with a strong sense of collective purpose, I have great confidence that we can work together to make tangible progress on these challenging issues.
- Progress that makes the “Grown in Washington” label on products mean: grown in a place where workers, employers and the state came together to ensure that in the agriculture sector, Washington is the best state for business and the best state in which to work.
- Before I conclude, I want to turn to Dan to read a statement provided by Erik Nicholson, United Farm Workers Vice President and Committee member, who could not be here today, as well as to provide any remarks he may have.
- Again, I want to thank everyone for agreeing to serve on this vital Committee.
- I look forward to remaining engaged in your work with an intent to build into your calendar updates for me, as well as the heads of other agencies involved on your progress.
- I also look forward to getting to know more about each of you and the work that you do day-in and day-out to support our great state’s agriculture economy.
- And, with that, I am going to turn things over to Dan.

Addendum II
August 26, 2019
Statement from Erik Nicholson

I am very sorry I cannot be with you all in person today. This meeting conflicts with a long standing family vacation; I very much look forward to participating in future meetings.

As I imagine others have or will soon say, today is a historic day. We applaud the efforts of ESD, Community to Community, Familias Unidas, the legal service community, growers and their respective organizations who came together earlier this year with the legislature to pass the historic legislation that constituted this committee today.

The United Farm Workers has been engaged on the issue of agricultural guest workers since our union's founding in the early 1960s. Ensuring that domestic workers' rights to employment, fair wages and just treatment remain top of the UFW's agenda today. While we remain active in Washington DC on the federal policy level, our work now also extends into Mexico where we have been actively looking at recruitment related issues in partnership with the federal government and a network of civil society organizations for a number of years. We look forward to sharing our experience on both fronts with this committee.

While the H-2A visa is primarily a federally administered program, there are clearly a number of increasingly important areas in which States need to play a more active role to both protect the rights of domestic farmworker and those agricultural workers employed with this visa.

We look forward to working with the members of this committee to construct a better future for all agricultural workers.

I hope today's deliberations are fruitful and look forward to learning about your work today upon my return.

Thank you,
Erik Nicholson
National Vice President
United Farm Workers

Addendum III
Second Draft – August 26, 2019
Office of Agricultural and Seasonal Workforce Services Advisory Committee Charter

OFFICE OF AGRICULTURAL AND SEASONAL WORKFORCE SERVICES ADVISORY COMMITTEE CHARTER

PURPOSE

The Legislature declared it to be in the public interest to clarify the state’s role in the H-2A temporary agricultural program to provide adequate protections for foreign and domestic workers, and provide education and outreach opportunities to help growers maintain the stable workforce they need. The Office of Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee (Committee) is established to comply with the intent of the Legislature by advising the Employment Security Department (Department) on ASWS operations and the management of the Foreign Labor Certification program within the Department’s purview.

GOALS

On issues and topics of interest related to the work of ASWS, the Committee is directed by the Legislature to:

- Provide comment on Department rule making and policy
- Provide comment on implementation of Chapter 441, Laws of 2019 and initiatives, and
- Study issues the Committee determines require consideration

The Committee will advise the Department in the organization and initiation of the Office of Agricultural and Seasonal Workforce Services, the coordination of all state agencies with regulatory authority over the agricultural workplace, and the ongoing operations of the Foreign Labor Certification program.

The Committee is required to submit a report to the governor and the Legislature by October 31st of even numbered years that:

- Identifies and recommends approaches to increase the effectiveness of the Department’s recruitment process as part of the H-2A application. This report may include recommended changes to state law that would increase recruitment and hiring of domestic workers in agriculture in Washington,

- Analyzes the cost incurred by the Department to administer the H-2A and other farmworker programs, and
- Analyzes the amount of funds allocated by the federal government to administer the H-2A program and all other programs within the Department.

The primary focus of the Committee's work shall be to advise on the ASWS budget and operations, as well as meeting the requirement to report to the governor and Legislature.

MEMBERSHIP

This Committee is made up of twelve members, as follows:

- Four voting members representing agricultural workers' interests, one of whom is a farm worker;
- Four voting members representing agricultural employers, one of whom is an agricultural employer;
- One non-voting ex officio member representing the Employment Security Department who shall serve as chair;
- One non-voting ex officio member from the Department of Labor and Industries;
- One non-voting ex officio member from the Department of Health;
- One non-voting ex officio member from the Department of Agriculture.

At the time of this Charter's creation, the following members have been appointed by the Commissioner:

- **Advisory Committee Chair- Employment Security Department:** Dan Zeitlin, Director, Policy, Data, Performance and Integrity Division
- **Agricultural Worker Rep.:** Michele Besso, Attorney, Northwest Justice Project
- **Agricultural Worker Rep.:** Rosalinda Guillen, Executive Director, Community to Community
- **Agricultural Worker Rep.:** Erik Nicholson, Vice-President, United Farm Workers
- **Agricultural Farmworker.:** Ramon Torres, President, Familias Unidas por la Justicia (FUJ)
- **Agricultural Employer Rep.:** Jon DeVaney, President, Washington State Tree Fruit Association
- **Agricultural Employer Rep.:** Michael Gempler, Executive Director, Washington Growers League
- **Agricultural Employer Rep.:** Delia Peña, Director of Orchard HR and H-2A, Zirkle Fruit Company
- **Agricultural Employer:** Rosella Mosby, Owner Operator, Mosby Farms
- **Department of Labor and Industries Rep.:** Uriel Iñiguez, Director, Community Relations
- **Department of Health Rep.:** Todd Phillips, Director, Environmental Health & Safety
- **Department of Agriculture Rep.:** Ignacio Marquez, Regional Assistant to the Director - Eastern/Central WA

MEMBER APPOINTMENT

TERMS

All members shall be appointed by the Commissioner to serve an initial term through December 31, 2020. Following the initial term, members shall serve staggered four-year terms following procedures set forth by the Committee. At the end of each term, members may either be replaced or re-appointed by the Commissioner. There is no term limit.

MEMBER REPLACEMENT

An opening on the Committee may occur due to a resignation or removal by the Commissioner for good cause. If there is an opening on the Committee during a member's term, the Commissioner shall appoint a replacement member to fill the position as designated in this charter, and as outlined in C 441 L 2019.

MEMBER EXPECTATIONS

OPEN PUBLIC MEETINGS ACT

The Washington Open Public Meetings Act (OPMA) applies to the Committee. Members must comply fully with the OPMA.

MEMBERS COMPENSATION

The members shall serve without compensation but are entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060. The Committee may utilize such personnel and facilities of the Department as it needs, without charge.

COMMITTEE MEETINGS

MEMBER MEETINGS - CADENCE

The Advisory Committee conducts a variety of meetings. Each of these meetings are open to the public but are not meetings of the public. The purpose of the meetings is to conduct Committee business and to provide the members an opportunity to discuss issues with each other and with staff scheduled on the agenda. To clarify, we provide the following definitions of meetings:

Regular Meeting: This is a business meeting held on a scheduled date, usually the third Thursday of each month. If it is determined that a meeting is not necessary to conduct Committee business, meeting cancellation will be communicated.

Special Meeting: This is a business meeting held on a date other than a regularly scheduled meeting. Advance notice of regular Committee meetings is posted on the Employment Security Department's website, and available upon request.

MEMBER MEETINGS - QUORUM

The members agree that a quorum constitutes a simple majority of the total statutorily required number of voting members (e.g. five voting members). The Chair and other Department representatives are not voting members.

As an example: as of 2019, the Committee has eight voting members allowed in statute. A quorum will consist of no less than five voting members (a simple majority of the total statutory number of voting members).

DECISION MAKING STRUCTURE

The members agree to use the *Robert's Rules of Order Newly Revised* to propose and agree upon decisions before the Committee. In the event of a conflict between this charter and Roberts' Rules of Order, the charter will control.

PUBLIC COMMENT

An opportunity for public comment will be scheduled during Committee meetings. Time limits for public comment will be established to ensure equitable time for each speaker and to ensure scheduled Committee business can be completed in a reasonable amount of time.

Citizens are invited to provide public comments to the Committee as designated on the meeting agenda. Time for public comments is limited to ensure that all who are interested have an opportunity to speak. A person initiating public comment will have a maximum of 5 minutes to present. Comments made by additional citizens on the same topic will be limited to 3 minutes per person and each person is allowed to speak once. A maximum of 30 minutes is allowed for public comment at the beginning of each meeting.

The Chair will strive to ensure that all perspectives have sufficient and equal opportunity to share with the Committee.

Addendum V
FINAL - October 17, 2019



SB 5438 Implementation
H-2A Application Confidentiality
October 2019

INTRODUCTION

Effective July 28, 2019, SB 5438 was codified into Revised Code of Washington (RCW) 50.75. The legislation created the Office of Agricultural and Seasonal Workforce Services within ESD to, among other mandated tasks, process and adjudicate H-2A applications. Under the H-2A program, agricultural employers bring in non-immigrant foreign workers when there are insufficient qualified domestic workers to fill temporary agriculture jobs. Employers using H-2A workers must pay specified rates of pay, provide housing and transportation, guarantee employment for a specified period of time, and meet other requirements.

A prospective employer of H-2A workers submits a U.S. Department of Labor form ETA 790 (job clearance order) to the Employment Security Department (ESD) and, upon approval, ESD initiates recruitment of domestic workers. The employer then submits an H-2A Application for Temporary Employment Certification and the ESD-approved ETA 790 to the U.S. Department of Labor, which certifies the employment of H-2A workers.

RCW 50.75.030(1) states that "the H-2A application is not subject to chapter 50.13 RCW," which is the statute governing Unemployment Compensation privacy and confidentiality in the state of Washington.

RCW 50.75.010 defines the H2A application as "*...an agricultural food processing clearance order form ETA 790 that describes the material terms and conditions of employment and is submitted in connection with a future application for temporary employment certification for H-2A workers to the United States department of labor under 20 C.F.R. Part 655, as amended.*"

Under RCW 50.75.030, H-2A applications (ETA 790s) are no longer subject to the Employment Security's enhanced confidentiality statute and instead are governed by federal statute and guidance, and the Washington State Public Records Act under RCW 42.56.

CURRENT PROCESS

The ESD distributes H-2A applications (ETA 790s) through a listserv for view by the public without the need for a public records requests due to the volume of public records requests for this information the Department received in the past. Prior to passage of SB 5438, the applications required redactions in compliance with state Unemployment Compensation privacy and confidentiality laws (RCW 50.13) so as to maintain the confidentiality of the employer submitting the application. The applications, however, once certified by the U.S. Department of Labor are posted in the [iCERT Portal System](#) with documentation that identifies the employer.

REVIEW

The intent of RCW 50.75.030(1) is to relieve ESD of the workload associated with redacting employer information from the H2A application as previously required under state Unemployment Compensation privacy and confidentiality laws (RCW

50.13) when that information is later made public by the U.S. Department of Labor. Under the Freedom of Information Act, all H-2A applications and related materials formally filed are released upon request. Any commercial or Trade Secret Act information may be redacted or withheld under federal law.

Likewise, ESD reviewed the Washington State Public Records Act (RCW 42.56) and found that the resulting H2A application would be a public record under Washington State law, subject to public records exemptions for redactions as applicable.

NEW PROCESS

In order to provide the information more expeditiously and with less overhead cost, ESD will continue to voluntarily automatically distribute H-2A applications (ETA 790s) through the listserve for view by the public without requiring a public records request for the information.

The applications will continue to redact the Federal Employer Identification Number (FEIN), but no further information will otherwise be redacted so that the public receives the information it is entitled to receive under federal and state law.

Accordingly, applications provided through the listserve will include the following information that was previously redacted:

1. Employer Name and Address
2. Telephone/Fax and email address
3. Address and Directions to Work Site
4. Address and Direction to Housing
5. Address of where to apply in-person for an interview.

Effective October 21, 2019, all employers will submit all H-2A ETA 790/790A forms through the Foreign Labor Application Gateway (FLAG) system instead of the iCERT portal. The job registry system that replaces iCERT, seasonaljobs.dol.gov, is already operational, however currently not all H-2A orders are posted on that site.

As such, this ESD policy and process may evolve as U.S. Department of Labor activities and guidance evolve.

Addendum VI
October 17, 2019

Agricultural and Seasonal Workforce Services

Confirmed meeting dates – 2019 through 2020

| Date (third Thursday, unless otherwise indicated) | Location | Host | Notes |
|--|----------------------|-------------------|---|
| August 26, 2019 | Olympia | ESD | 212 Maple Park, Maple Leaf CR |
| October 17, 2019 | Olympia | ESD | 304 15 th Ave SW, JAC ABC CR |
| November 22, 2019 | Union Gap | WorkSource | 1205 Ahtanum Ridge Dr, Suite A |
| December 19, 2019 | Cancelled | n/a | No meeting |
| January 16, 2020 | Skagit | Rosalinda Guillen | |
| February 20, 2020 | Olympia | ESD | TBD |
| March 19, 2020 | Tri-Cities | Erik Nicholson | TBD |
| April 16, 2020 | Yakima | Michele Besso | TBD |
| May 21, 2020 | Whatcom | Ramon Torres | TBD |
| June 18, 2020 | Auburn | Rosella Mosby | TBD |
| July 16, 2020 | Yakima | Delia Peña | TBD |
| August 20, 2020 | Yakima | Jon DeVaney | TBD |
| September 17, 2020 | Ellensburg | Michael Gempler | TBD |
| October 15, 2020 | Olympia | ESD | Final approval of report to Legislature |
| November 19, 2020 | TBD | | |
| December 17, 2020 | TBD | | |

NOTE: Hosts may have the opportunity to present to the committee and bring invited guests as part of our meeting agenda.

Addendum VII
October 17, 2019
**ASWS Advisory Committee
Facilitated Discussion Notes**

Ground Rules

- No side conversations
 - including phones – step out for phone conversations
- Phones on silent
- Let people speak without interruption
- Respect the opinions of others
- Strive for understanding
- Speak your mind: don't hold back your opinions
- Strive for common ground
- Assume good intent
- Stay focused on task at hand, and be willing to come back to the topic
- Make sure everyone understands
 - Check for and ask for understanding
- Look out for each other
- Take care of your own comfort
- Ask for what you need
 - Including time to make recommendation/decision
 - Even if it slows the process

Core Values

Respect – Respeto: Respect, respectful communication, respect of varied perspectives

Equity – Igualdo: Equity

Honesty – Honestidad: Honesty, candor, no hidden agendas, integrity, transparency, speak the truth

Accountability – Tome de responsabilidad: Accountability, integrity, commitment to the process, rules-based

Goal Oriented – Orientada hacia el la meta: Commitment to high quality, coordination through communication, cooperation, keep the bigger picture in mind, economic security. The “bigger picture” is defined as:

*Successful agriculture workforce and industry
Exito en la industria de la agricultura en la fuerza de trabajo*

Focus Areas / Problems & Concerns**Retaliation**

- Create a system you can ask questions without fear of getting in trouble for both employer/worker
- Retaliation - domestic and other countries
- Threat of “no rehire” retaliation

Inspections

- Inspections for work site without the presence of supervisors – *inspecciones en el lugar de trabajo sin majordomos el supervisors*

Housing

- Housing for domestic and H2A workers (funding)

Oversight

- Oversight processes (need to establish for field checks and complaints)
- Defining an agriculture monitoring system
- Open access to labor camp housing for agencies, clinics, union, legal services

Health and Injuries

- Care for injured H2A workers

Public Notice

- Regional community outreach, education – H2A community impacts

Complaints

- Better system to manage complaints from workers to state
- Worksource complaint system
- Timely, efficient response to H2A worker problems and concerns

Perception

- Public perception of agriculture

Worker Rights

- Information for workers on rights and resources
- Outreach to H2A workers to education on their rights
- Make sure workers get breaks and lunch time – *asegurar acceso a break and lunches*

Domestic Recruitment

- Labor market test - domestic/local worker recruitment
- Identification of barriers from worker perspective to agriculture employment
- Electronic ads for farmworkers translated to Spanish sooner than later
- Domestic – facilitating private or non-traditional partnerships between groups and farmers (i.e. churches, displaced populations, youth groups, veterans, immigrant refugee groups)
- Recruitment – how process might be improved
- Accurate representation of recruitment system; define current practices
- Identify specific instances of displacement of local workers by H2A
- Make sure to hire local workers first – *asegurar trabajo a trabajadores domesticos primero*
- Identify scope of local worker displacement by H2A workers

- Recruitment of domestic workers
- Recruitment of local workers

Employer Outreach

- Training and outreach to employers
- Employer best practices
- Provide proper training and education of new processes
- Create a clear understanding of process and procedures once workers arrive
- Create processes that small and large groups can apply

Data

- MSFW Workforce data availability (there's not any)
- Accurate information on compliance
- Data collection and surveys (wages) can one be done that results in findings accepted as accurate by all stakeholders under the correct rules?
- Accurate counts of domestic workers

Agency Coordination

- Coordination of enforcement agencies
- Agency collaboration (federal and state)
- Federal vs state
- How state agencies will effectively coordinate response in H2A context
- Enforcement and monitoring
 - Define/identify duties of federal and state agencies
 - Identify gaps or coordination issues

Foreign Recruitment

- Potential abuses in the recruitment outside the US
- Oversight and disclosure of recruiters dispatching workers to WA farms
- Gender equity / discrimination in employment

Human Trafficking

- Monitoring of human trafficking

Budget

- Review and define appropriate budget structure