

SENATE BILL REPORT

SB 5396

As Reported by Senate Committee On:
Housing & Local Government, February 11, 2021
Ways & Means, February 22, 2021

Title: An act relating to expanding the sales and use tax exemption for farmworker housing.

Brief Description: Expanding the sales and use tax exemption for farmworker housing.

Sponsors: Senators Lovelett, Saldaña, Conway, Das, Kuderer, Nguyen and Wilson, C..

Brief History:

Committee Activity: Housing & Local Government: 2/09/21, 2/11/21 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/19/21, 2/22/21 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- Extends the farmworker housing sales and use tax exemption to include new or existing structures in which at least 50 percent of the housing units are used as farmworker housing.
- Defines farmworker and amends the definition of agricultural employer to include any employer engaged in aquaculture.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5396 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett and Salomon.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Short, Assistant Ranking Member; Warnick.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5396 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hunt, Keiser, Lias, Mullet, Pedersen, Van De Wege, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Gildon, Hasegawa, Muzzall and Rivers.

Staff: Alia Kennedy (786-7405)

Background: Farmworker housing providers may use a sales and use tax exemption for building, repairing, decorating, or improving new or existing agricultural employee housing. The tax exemption applies to labor and services related to construction and sales of items that become part of housing structures. Agricultural housing must be used to house agricultural employees for at least five years from the date the housing is approved for occupancy. Housing built for family members and people with an ownership in the farm is not eligible for the tax exemption. Agricultural employee housing includes facilities provided by an agricultural employer on a year-round or seasonal basis to the employer's agricultural employees.

Summary of Bill (Second Substitute): The farmworker housing sales and use tax exemption applies to new or existing structures in which at least 50 percent of the housing units are used as farmworker housing. An agricultural employer includes any employer engaged in aquaculture. Farmworker housing includes housing occupied by a household with at least one member who is a farmworker, or housing occupied by a farmworker on a seasonal basis where the housing is not used as farmworker housing for a portion of the year. The sales and use tax exemption does not apply to housing built exclusively for workers in the United States on an H-2A visa. If during any agricultural season in the first five years following approval for an exemption the housing is occupied by a farmworker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

The term agricultural employee is replaced with the term farmworker. A farmworker includes a single person, family, or unrelated persons living together with combined incomes derived from farm work of at least \$3,000 per year. Farm work is defined to include cultivating the soil, raising or harvesting any agricultural or aquacultural commodity, delivering to market any agricultural or aquacultural commodity, or working in an agricultural processing plant.

The farmworker sales and use tax exemption expires on January 1, 2032.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Clarifies in the definition of "farmworker" that the \$3,000 threshold applies to the entire household unit.
- Clarifies in the definition of "farmworker housing" that housing units used on a seasonal basis for farmworker housing may be rented to the general public when not being used for farmworker housing.
- Provides that housing qualifies for a tax exemption so long as a farmworker who does not have an H-2A visa occupies the housing at any point during the required five-year exemption period.
- Adds an effective date of October 1, 2021.

EFFECT OF CHANGES MADE BY HOUSING & LOCAL GOVERNMENT COMMITTEE (First Substitute):

- Clarifies that the farmworker sales and use tax exemption applies to all housing units in the development if at least 50 percent of the units are for farmworker housing.
- Provides that the sales and use tax exemption does not apply to housing built exclusively for workers in the United States on an H-2A visa.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Housing & Local Government):
The committee recommended a different version of the bill than what was heard. PRO: Farmworker housing is a critical need in Washington. There are inconsistent definitions not in alignment with other policies and programs for farmworkers, and the changes in the bill align definitions with other programs and makes it easier to administer. The tax incentive

benefits both permanent and seasonal farmworker housing. The changes in the bill will provide incentives to build more farmworker housing units.

CON: The ban on housing provided for H-2A workers should be removed. Farmworker housing needs to be flexible to meet the demands for agricultural employers. Costs will increase if housing may not be used for H-2A workers. An agricultural employer must hire all willing and able domestic workers before applying for a H-2A permit. The H-2A program is expensive, and Washington needs to work on fixing the state's labor shortage.

Persons Testifying (Housing & Local Government): PRO: Senator Liz Lovelett, Prime Sponsor; Marty Miller, Office of Rural and Farmworker Housing; Cindy Proctor, Member of Affordable Housing Advisory Board.

CON: Rosella Mosby, Mosby Farms; Albert Zepeda, Kyle Mathison Orchards Inc; Bre Elsey, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying (Housing & Local Government): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill provides an incentive for agricultural employers to provide employee housing. Expansion of the exemption would allow for a variety of housing types, as occupancy does change throughout the year. Clarity is needed for how the bill treats housing for domestic and foreign farmworkers.

CON: There are concerns with the H-2A housing restrictions. A farmer cannot build housing exclusively for H-2A employees and must offer jobs to domestic workers. It is unclear in the bill if the exemption would be lost if housing was used for H-2A workers.

OTHER: The bill makes Washington a competitive location for farmworkers. The H-2A restrictions may halt the building of farmworker housing. Farmers need flexibility in employee housing options.

Persons Testifying (Ways & Means): PRO: Nina Martinez, Latino Civic Alliance; Marty Miller, Office of Rural and Farmworker Housing.

CON: Bre Elsey, Washington Farm Bureau.

OTHER: Pam Lewison, Washington Policy Center.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.