

SENATE BILL REPORT

SSB 5156

As Amended by House, April 12, 2023

Title: An act relating to expanding the farm internship program.

Brief Description: Expanding the farm internship program.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Torres, Dhingra, Hasegawa, Hunt, Muzzall, Nobles, Randall, Rolfes, Schoesler, Shewmake, Wagoner, Warnick, Wellman and Wilson, L.).

Brief History:

Committee Activity: Labor & Commerce: 1/16/23, 1/17/23 [DPS].

Floor Activity: Passed Senate: 1/25/23, 49-0.

Passed House: 4/12/23, 97-0.

Brief Summary of First Substitute Bill

- Extends the farm internship pilot program to all counties.
- Removes the expiration of the program.
- Adds a requirement to obtain the special certificate that the interns will perform work that encourages the interns to participate in career and technical education or other educational content with courses in agriculture or related programs at a community or technical college.
- Increases the annual sales for the definition of a small farm to less than \$265,000, rather than less than \$250,000.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5156 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson, Schoesler, and Stanford.

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.

Staff: Susan Jones (786-7404)

Background: Employment Laws. A number of laws provide employment protections to workers. These include the Minimum Wage Act (MWA), the Industrial Insurance Act, and the Employment Security Act. While these acts define who is covered in different ways, generally a person who provides services to a for-profit business is covered by the acts. Exemptions apply to each act. Referring to an individual as an intern or volunteer does not exempt the employer or the worker from the respective acts.

Minimum Wage Act. The MWA establishes a minimum wage which must be paid to all employees, unless they are exempt. Exempt employees include certain agricultural employees and volunteers for nonprofit organizations. The director of the Department of Labor and Industries (L&I) may, to prevent curtailment of opportunities for employment, issue special certificates to employers allowing them to pay wages lower than the minimum wage to learners.

Industrial Insurance. Industrial insurance provides medical and time loss benefits to workers injured in the course of their employment. Employers insure through the State Fund administered by L&I or, if qualified, may self-insure. State Fund premiums are calculated based on the industry risk classification and the employer's experience rating.

Unemployment Insurance. Under the Employment Security Act, qualified individuals who have lost their jobs through no fault of their own, or who quit for good cause, are entitled to unemployment insurance benefits. Exemptions include certain agricultural labor performed by students.

Farm Internship Pilot Project. In 2010, the Legislature directed L&I to establish a farm internship pilot project. The program expired and has been extended or reestablished. The pilot project, which originally began with a few counties, consists of the following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, Thurston, Walla Walla, Clark, Cowlitz, and Lewis.

Under the project, qualified small farms are allowed to employ up to three farm interns at any time, working under special certificates issued by L&I. Farms seeking to employ interns submit an application to L&I and are required to execute an agreement with the intern that sets forth specified information.

Under the pilot, farm interns are not considered employees under the MWA. Similarly, agricultural labor provided by a farm intern are not employment for purposes of unemployment insurance. L&I provides a special industrial insurance risk class for farm interns. Upon receipt of an application, L&I reviews the application and issues a certificate within 15 days if L&I finds the following:

- the farm qualifies as a small farm;

- there have been no serious violations of the minimum wage or workers' compensation laws that provide reasonable grounds to believe the terms of an internship agreement may not be complied with;
- issuing a certificate will not create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or occupation at which the intern is to be employed;
- a farm intern will not displace an experienced worker; and
- the farm demonstrates that the interns will perform work for the farm under an internship program that:
 1. provides a curriculum of learning modules and supervised participation in farm work activities designed to teach farm interns about farming practices and farm enterprises;
 2. is based on the bona fide curriculum of an educational or vocational institution; and
 3. is reasonably designed to provide the intern with vocational knowledge and skills about farming practices and enterprises.

When assessing an internship program, L&I may consult with relevant college and university departments and extension programs, and state and local government agencies involved in the regulation or development of agriculture.

Before employing an intern, a farm has to submit a statement confirming its understanding and intent to comply with certain labor laws and pay required workers' compensation premiums. L&I may revoke a certificate for a farm's failure to pay the premiums for interns or non-interns, and for other reasons.

A small farm is defined as a farm:

- organized as a sole proprietorship, partnership, or corporation;
- that reports on the IRS Form 1040 Schedule F annual sales less than \$250,000; and
- where all the owners or partners of the farm provide regular labor to and participate in the management of the farm, and own or lease the productive assets of the farm.

The farm internship pilot project and related provisions is scheduled to expire on December 31, 2025.

Summary of First Substitute Bill: The farm internship program extends to all counties and does not expire.

In addition to current requirements to obtain the special certificate, L&I must find that the farm demonstrates that the interns will perform work that encourages the interns to participate in career and technical education or other educational content with courses in agriculture or related programs at a community or technical college.

For the definition of small farm, the annual sales that it reports on the IRS Form 1040 Schedule F must be less than \$265,000, rather than less than \$250,000.

The expiration date is removed related to exceptions for unemployment insurance, the exception in the definition of employee for farm interns, and the special workers' compensation risk class for farm interns.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on First Substitute: PRO: This would open the program to all counties and make the program permanent. Many counties were wanting to participate and are ineligible. This is a great opportunity for interns who want to learn how to farm or run a farm. Washington provides 70 percent of the nation's hops. This is a great bill for anyone who wants to create their own brewery or work in the hop industry.

We depend on Washington farmers for food. There is a strong and important partnership between hunger relief programs, government, and Washington producers and growers. There has been 70 million pounds of donated foods to the hunger relief system. There are farm to school and farm to food pantry programs. These are programs to source more Washington produce. This is a part of a broader systems thinking to uplift the state's food system.

Persons Testifying: PRO: Senator Nikki Torres, Prime Sponsor; Aaron Czyzewski, Food Lifeline.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Requires any small farm in a county that becomes eligible to participate in the farm intern project on the effective date of the act to have at least one interns who has or whose parent or grandparent has direct experience working as a migrant farmworker; provided that if a farm is employing only one intern and it does not receive any applications from individuals meeting the criteria, the requirement does not apply.
- Mandates that L&I issue the special certificate to such a farm if, among other requirements, it has included in the application either an attestation: (1) from at least one farm intern stating that the farm intern or their parent or grandparent has direct experience working as a migrant farmworker; or (2) that the farm is employing only one intern and the

farm did not receive any applications from individuals who meet the criteria.