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**SUBSTITUTE SENATE BILL 5156**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

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

READ FIRST TIME 01/18/23.

1 AN ACT Relating to expanding the farm internship program;  
2 amending RCW 49.12.471, 49.46.010, 50.04.152, and 51.16.243; creating  
3 a new section; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that encouraging  
6 participation in agriculture is valuable. The farm internship program  
7 allows students to experience farming practices and get hands-on  
8 experience with farming activities. The internship program has  
9 existed since 2014 and was piloted in a few select counties. The  
10 legislature finds that this program is valuable, should be extended  
11 to all counties, and should continue without an expiration date.

12 **Sec. 2.** RCW 49.12.471 and 2020 c 212 s 1 are each amended to  
13 read as follows:

14 (1) The director shall establish a farm internship (~~(pilot)~~)  
15 project for the employment of farm interns on small farms under  
16 special certificates at wages, if any, as authorized by the  
17 department and subject to such limitations as to time, number,  
18 proportion, and length of service as provided in this section and as  
19 prescribed by the department. (~~The pilot project consists of the~~  
20 ~~following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce,~~

1 Jefferson, ~~Spokane, Yakima, Chelan, Grant, Island, Snohomish,~~  
2 ~~Kittitas, Lincoln, Thurston, Walla Walla, Clark, Cowlitz, and~~  
3 ~~Lewis.~~)

4 (2) A small farm may employ no more than three interns at one  
5 time under this section.

6 (3) A small farm must apply for a special certificate on a form  
7 made available by the director. The application must set forth: The  
8 name of the farm and a description of the farm seeking the  
9 certificate; the type of work to be performed by a farm intern; a  
10 description of the internship program; the period of time for which  
11 the certificate is sought and the duration of an internship; the  
12 number of farm interns for which a special certificate is sought; the  
13 wages, if any, that will be paid to the farm intern; any room and  
14 board, stipends, and other remuneration the farm will provide to a  
15 farm intern; and the total number of workers employed by the farm.

16 (4) Upon receipt of an application, the department shall review  
17 the application and issue a special certificate to the requesting  
18 farm within fifteen days if the department finds that:

19 (a) The farm qualifies as a small farm;

20 (b) There have been no serious violations of chapter 49.46 RCW or  
21 Title 51 RCW that provide reasonable grounds to believe that the  
22 terms of an internship agreement may not be complied with;

23 (c) The issuance of a certificate will not create unfair  
24 competitive labor cost advantages nor have the effect of impairing or  
25 depressing wage or working standards established for experienced  
26 workers for work of a like or comparable character in the industry or  
27 occupation at which the intern is to be employed;

28 (d) A farm intern will not displace an experienced worker; and

29 (e) The farm demonstrates that the interns will perform work for  
30 the farm under an internship program that: (i) Provides a curriculum  
31 of learning modules and supervised participation in farm work  
32 activities designed to teach farm interns about farming practices and  
33 farm enterprises; (ii) is based on the bona fide curriculum of an  
34 educational or vocational institution; (iii) encourages the interns  
35 to participate in career and technical education or other educational  
36 content with courses in agriculture or related programs of study at a  
37 community or technical college; and ~~((iii))~~ (iv) is reasonably  
38 designed to provide the intern with vocational knowledge and skills  
39 about farming practices and enterprises. In assessing an internship  
40 program, the department may consult with relevant college and

1 university departments and extension programs and state and local  
2 government agencies involved in the regulation or development of  
3 agriculture.

4 (5) A special certificate issued under this section must specify  
5 the terms and conditions under which it is issued, including: The  
6 name of the farm; the duration of the special certificate allowing  
7 the employment of farm interns and the duration of an internship; the  
8 total number of interns authorized under the special certificate; the  
9 authorized wage rate, if any; and any room and board, stipends, and  
10 other remuneration the farm will provide to the farm intern. A farm  
11 intern may be paid at wages specified in the certificate only during  
12 the effective period of the certificate and for the duration of the  
13 internship.

14 (6) If the department denies an application for a special  
15 certificate, notice of denial must be mailed to the farm. The farm  
16 listed on the application may, within fifteen days after notice of  
17 such action has been mailed, file with the director a petition for  
18 review of the denial, setting forth grounds for seeking such a  
19 review. If reasonable grounds exist, the director or the director's  
20 authorized representative may grant such a review and, to the extent  
21 deemed appropriate, afford all interested persons an opportunity to  
22 be heard on such review.

23 (7) Before employing a farm intern, a farm must submit a  
24 statement on a form made available by the director stating that the  
25 farm understands: The requirements of the industrial welfare act,  
26 this chapter, that apply to farm interns; that the farm must pay  
27 workers' compensation premiums in the assigned intern risk class and  
28 must pay workers' compensation premiums for nonintern work hours in  
29 the applicable risk class; and that if the farm does not comply with  
30 subsection (8) of this section, the director may revoke the special  
31 certificate.

32 (8) The director may revoke a special certificate issued under  
33 this section if a farm fails to: Comply with the requirements of the  
34 industrial welfare act, this chapter, that apply to farm interns; pay  
35 workers' compensation premiums in the assigned intern risk class; or  
36 pay workers' compensation premiums in the applicable risk class for  
37 nonintern work hours.

38 (9) Before the start of a farm internship, the farm and the  
39 intern must sign a written agreement and send a copy of the agreement  
40 to the department. The written agreement must, at a minimum:

1 (a) Describe the internship program offered by the farm,  
2 including the skills and objectives the program is designed to teach  
3 and the manner in which those skills and objectives will be taught;

4 (b) Explicitly state that the intern is not entitled to  
5 unemployment benefits or minimum wages for work and activities  
6 conducted pursuant to the internship program for the duration of the  
7 internship;

8 (c) Describe the responsibilities, expectations, and obligations  
9 of the intern and the farm, including the anticipated number of hours  
10 of farm activities to be performed by and the anticipated number of  
11 hours of curriculum instruction provided to the intern per week;

12 (d) Describe the activities of the farm and the type of work to  
13 be performed by the farm intern; and

14 (e) (~~Describes~~ [~~Describe~~]) Describe any wages, room and board,  
15 stipends, and other remuneration the farm will provide to the farm  
16 intern.

17 (10) The department must limit the administrative costs of  
18 implementing the internship (~~(pilot)~~) program by relying on farm  
19 organizations and other stakeholders to perform outreach and inform  
20 the farm community of the program and by limiting employee travel to  
21 the investigation of allegations of noncompliance with program  
22 requirements.

23 (11) The definitions in this subsection apply throughout this  
24 section unless the context clearly requires otherwise.

25 (a) "Farm intern" means an individual who provides services to a  
26 small farm under a written agreement and primarily as a means of  
27 learning about farming practices and farm enterprises.

28 (b) "Farm internship program" means an internship program  
29 described under subsection (4)(e) of this section.

30 (c) "Small farm" means a farm:

31 (i) Organized as a sole proprietorship, partnership, or  
32 corporation;

33 (ii) That reports on the applicant's schedule F of form 1040 or  
34 other applicable form filed with the United States internal revenue  
35 service annual sales less than (~~(two hundred fifty thousand dollars)~~)  
36 \$265,000; and

37 (iii) Where all the owners or partners of the farm provide  
38 regular labor to and participate in the management of the farm, and  
39 own or lease the productive assets of the farm.

1 (12) The department shall monitor and evaluate the farm  
2 internships authorized by this section and report to the appropriate  
3 committees of the legislature by December 31, 2024. The report must  
4 include, but not be limited to: The number of small farms that  
5 applied for and received special certificates; the number of interns  
6 employed as farm interns; the nature of the educational activities  
7 provided to the farm interns; the wages and other remuneration paid  
8 to farm interns; the number of and type of workers' compensation  
9 claims for farm interns; the employment of farm interns following  
10 farm internships; and other matters relevant to assessing farm  
11 internships authorized in this section.

12 (~~((13) This section expires December 31, 2025.))~~)

13 **Sec. 3.** RCW 49.46.010 and 2020 c 212 s 3 are each amended to  
14 read as follows:

15 As used in this chapter:

16 (1) "Director" means the director of labor and industries;

17 (2) "Employ" includes to permit to work;

18 (3) "Employee" includes any individual employed by an employer  
19 but shall not include:

20 (a) Any individual (i) employed as a hand harvest laborer and  
21 paid on a piece rate basis in an operation which has been, and is  
22 generally and customarily recognized as having been, paid on a piece  
23 rate basis in the region of employment; (ii) who commutes daily from  
24 his or her permanent residence to the farm on which he or she is  
25 employed; and (iii) who has been employed in agriculture less than  
26 thirteen weeks during the preceding calendar year;

27 (b) Any individual employed in casual labor in or about a private  
28 home, unless performed in the course of the employer's trade,  
29 business, or profession;

30 (c) Any individual employed in a bona fide executive,  
31 administrative, or professional capacity or in the capacity of  
32 outside salesperson as those terms are defined and delimited by rules  
33 of the director. However, those terms shall be defined and delimited  
34 by the human resources director pursuant to chapter 41.06 RCW for  
35 employees employed under the director of personnel's jurisdiction;

36 (d) Any individual engaged in the activities of an educational,  
37 charitable, religious, state or local governmental body or agency, or  
38 nonprofit organization where the employer-employee relationship does  
39 not in fact exist or where the services are rendered to such

1 organizations gratuitously. If the individual receives reimbursement  
2 in lieu of compensation for normally incurred out-of-pocket expenses  
3 or receives a nominal amount of compensation per unit of voluntary  
4 service rendered, an employer-employee relationship is deemed not to  
5 exist for the purpose of this section or for purposes of membership  
6 or qualification in any state, local government, or publicly  
7 supported retirement system other than that provided under chapter  
8 41.24 RCW;

9 (e) Any individual employed full time by any state or local  
10 governmental body or agency who provides voluntary services but only  
11 with regard to the provision of the voluntary services. The voluntary  
12 services and any compensation therefor shall not affect or add to  
13 qualification, entitlement, or benefit rights under any state, local  
14 government, or publicly supported retirement system other than that  
15 provided under chapter 41.24 RCW;

16 (f) Any newspaper vendor, carrier, or delivery person selling or  
17 distributing newspapers on the street, to offices, to businesses, or  
18 from house to house and any freelance news correspondent or  
19 "stringer" who, using his or her own equipment, chooses to submit  
20 material for publication for free or a fee when such material is  
21 published;

22 (g) Any carrier subject to regulation by Part 1 of the Interstate  
23 Commerce Act;

24 (h) Any individual engaged in forest protection and fire  
25 prevention activities;

26 (i) Any individual employed by any charitable institution charged  
27 with child care responsibilities engaged primarily in the development  
28 of character or citizenship or promoting health or physical fitness  
29 or providing or sponsoring recreational opportunities or facilities  
30 for young people or members of the armed forces of the United States;

31 (j) Any individual whose duties require that he or she reside or  
32 sleep at the place of his or her employment or who otherwise spends a  
33 substantial portion of his or her work time subject to call, and not  
34 engaged in the performance of active duties;

35 (k) Any resident, inmate, or patient of a state, county, or  
36 municipal correctional, detention, treatment or rehabilitative  
37 institution;

38 (l) Any individual who holds a public elective or appointive  
39 office of the state, any county, city, town, municipal corporation or

1 quasi municipal corporation, political subdivision, or any  
2 instrumentality thereof, or any employee of the state legislature;

3 (m) All vessel operating crews of the Washington state ferries  
4 operated by the department of transportation;

5 (n) Any individual employed as a seaman on a vessel other than an  
6 American vessel;

7 (o) (~~Until December 31, 2025, any~~) Any farm intern providing  
8 his or her services to a small farm which has a special certificate  
9 issued under RCW 49.12.471;

10 (p) An individual who is at least (~~sixteen~~) 16 years old but  
11 under twenty-one years old, in his or her capacity as a player for a  
12 junior ice hockey team that is a member of a regional, national, or  
13 international league and that contracts with an arena owned,  
14 operated, or managed by a public facilities district created under  
15 chapter 36.100 RCW;

16 (4) "Employer" includes any individual, partnership, association,  
17 corporation, business trust, or any person or group of persons acting  
18 directly or indirectly in the interest of an employer in relation to  
19 an employee;

20 (5) "Occupation" means any occupation, service, trade, business,  
21 industry, or branch or group of industries or employment or class of  
22 employment in which employees are gainfully employed;

23 (6) "Retail or service establishment" means an establishment  
24 seventy-five percent of whose annual dollar volume of sales of goods  
25 or services, or both, is not for resale and is recognized as retail  
26 sales or services in the particular industry;

27 (7) "Wage" means compensation due to an employee by reason of  
28 employment, payable in legal tender of the United States or checks on  
29 banks convertible into cash on demand at full face value, subject to  
30 such deductions, charges, or allowances as may be permitted by rules  
31 of the director.

32 **Sec. 4.** RCW 50.04.152 and 2020 c 212 s 2 are each amended to  
33 read as follows:

34 (1) Except for services subject to RCW 50.44.010, 50.44.020,  
35 50.44.030, or 50.50.010, the term "employment" does not include  
36 service performed in agricultural labor by a farm intern providing  
37 his or her services under a farm internship program as established in  
38 RCW 49.12.471.

39 (2) For purposes of this section, "agricultural labor" means:

1 (a) Services performed on a farm, in the employ of any person, in  
2 connection with the cultivation of the soil, or in connection with  
3 raising or harvesting any agricultural or horticultural commodity,  
4 including raising, shearing, feeding, caring for, training, and  
5 management of livestock, bees, poultry, and furbearing animals and  
6 wildlife, or in the employ of the owner or tenant or other operator  
7 of a farm in connection with the operation, management, conservation,  
8 improvement, or maintenance of such farm and its tools and equipment;

9 (b) Services performed in packing, packaging, grading, storing,  
10 or delivering to storage, or to market or to a carrier for  
11 transportation to market, any agricultural or horticultural  
12 commodity; but only if such service is performed as an incident to  
13 ordinary farming operations. The exclusions from the term  
14 "employment" provided in this subsection (2)(b) are not applicable  
15 with respect to commercial packing houses, commercial storage  
16 establishments, commercial canning, commercial freezing, or any other  
17 commercial processing or with respect to services performed in  
18 connection with the cultivation, raising, harvesting, and processing  
19 of oysters or raising and harvesting of mushrooms; or

20 (c) Direct local sales of any agricultural or horticultural  
21 commodity after its delivery to a terminal market for distribution or  
22 consumption.

23 ~~((3) This section expires December 31, 2025.))~~

24 **Sec. 5.** RCW 51.16.243 and 2020 c 212 s 4 are each amended to  
25 read as follows:

26 (1) The department shall adopt rules to provide special workers'  
27 compensation risk class or classes for farm interns providing  
28 agricultural labor pursuant to a farm internship program under RCW  
29 49.12.471. The rules must include any requirements for obtaining a  
30 special risk class that must be met by small farms.

31 ~~((2) This section expires December 31, 2025.))~~

32 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of  
34 the state government and its existing public institutions, and takes  
35 effect immediately.

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