

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5156

68th Legislature
2023 Regular Session

Passed by the Senate April 14, 2023
Yeas 46 Nays 0

President of the Senate

Passed by the House April 12, 2023
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5156** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5156

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

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

6 (b) For any small farm located in a county that became eligible
7 to participate in the farm intern project on the effective date of
8 this act, at least one of the interns employed by the farm must be an
9 individual who, in addition to meeting the farm's qualifications
10 applicable to all intern applicants, also has direct experience
11 working as a migrant farmworker or whose parent or grandparent has
12 direct experience working as a migrant farmworker. If a farm is
13 employing only one intern and the farm does not receive any
14 applications from individuals who meet the criteria set forth in this
15 subsection, the requirement of this subsection does not apply. If a
16 farm is employing more than one intern, the farm must employ at least
17 one intern who meets the criteria set forth in this subsection.

18 (3) A small farm must apply for a special certificate on a form
19 made available by the director. The application must set forth: The
20 name of the farm and a description of the farm seeking the
21 certificate; the type of work to be performed by a farm intern; a
22 description of the internship program; the period of time for which
23 the certificate is sought and the duration of an internship; the
24 number of farm interns for which a special certificate is sought; the
25 wages, if any, that will be paid to the farm intern; any room and
26 board, stipends, and other remuneration the farm will provide to a
27 farm intern; and the total number of workers employed by the farm.

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

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

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

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

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

3 (e) If subsection (2)(b) of this section applies, the farm has
4 included in the application either: (i) An attestation from at least
5 one farm intern stating that the farm intern is an individual who has
6 direct experience working as a migrant farmworker or whose parent or
7 grandparent has direct experience working as a migrant farmworker; or
8 (ii) an attestation that the farm is employing only one intern and
9 the farm did not receive any applications from individuals who meet
10 the criteria set forth in subsection (2)(b) of this section; and

11 (f) The farm demonstrates that the interns will perform work for
12 the farm under an internship program that: (i) Provides a curriculum
13 of learning modules and supervised participation in farm work
14 activities designed to teach farm interns about farming practices and
15 farm enterprises; (ii) is based on the bona fide curriculum of an
16 educational or vocational institution; (iii) encourages the interns
17 to participate in career and technical education or other educational
18 content with courses in agriculture or related programs of study at a
19 community or technical college; and ((iii)) (iv) is reasonably
20 designed to provide the intern with vocational knowledge and skills
21 about farming practices and enterprises. In assessing an internship
22 program, the department may consult with relevant college and
23 university departments and extension programs and state and local
24 government agencies involved in the regulation or development of
25 agriculture.

26 (5) A special certificate issued under this section must specify
27 the terms and conditions under which it is issued, including: The
28 name of the farm; the duration of the special certificate allowing
29 the employment of farm interns and the duration of an internship; the
30 total number of interns authorized under the special certificate; the
31 authorized wage rate, if any; and any room and board, stipends, and
32 other remuneration the farm will provide to the farm intern. A farm
33 intern may be paid at wages specified in the certificate only during
34 the effective period of the certificate and for the duration of the
35 internship.

36 (6) If the department denies an application for a special
37 certificate, notice of denial must be mailed to the farm. The farm
38 listed on the application may, within fifteen days after notice of
39 such action has been mailed, file with the director a petition for
40 review of the denial, setting forth grounds for seeking such a

1 review. If reasonable grounds exist, the director or the director's
2 authorized representative may grant such a review and, to the extent
3 deemed appropriate, afford all interested persons an opportunity to
4 be heard on such review.

5 (7) Before employing a farm intern, a farm must submit a
6 statement on a form made available by the director stating that the
7 farm understands: The requirements of the industrial welfare act,
8 this chapter, that apply to farm interns; that the farm must pay
9 workers' compensation premiums in the assigned intern risk class and
10 must pay workers' compensation premiums for nonintern work hours in
11 the applicable risk class; and that if the farm does not comply with
12 subsection (8) of this section, the director may revoke the special
13 certificate.

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

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

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

26 (b) Explicitly state that the intern is not entitled to
27 unemployment benefits or minimum wages for work and activities
28 conducted pursuant to the internship program for the duration of the
29 internship;

30 (c) Describe the responsibilities, expectations, and obligations
31 of the intern and the farm, including the anticipated number of hours
32 of farm activities to be performed by and the anticipated number of
33 hours of curriculum instruction provided to the intern per week;

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

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

39 (10) The department must limit the administrative costs of
40 implementing the internship (~~pilot~~) program by relying on farm

1 organizations and other stakeholders to perform outreach and inform
2 the farm community of the program and by limiting employee travel to
3 the investigation of allegations of noncompliance with program
4 requirements.

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

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

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

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

13 (i) Organized as a sole proprietorship, partnership, or
14 corporation;

15 (ii) That reports on the applicant's schedule F of form 1040 or
16 other applicable form filed with the United States internal revenue
17 service annual sales less than (~~two hundred fifty thousand dollars~~)
18 \$265,000; and

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

22 (12) The department shall monitor and evaluate the farm
23 internships authorized by this section and report to the appropriate
24 committees of the legislature by December 31, 2024. The report must
25 include, but not be limited to: The number of small farms that
26 applied for and received special certificates; the number of interns
27 employed as farm interns; the nature of the educational activities
28 provided to the farm interns; the wages and other remuneration paid
29 to farm interns; the number of and type of workers' compensation
30 claims for farm interns; the employment of farm interns following
31 farm internships; and other matters relevant to assessing farm
32 internships authorized in this section.

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

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

36 As used in this chapter:

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

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

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

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

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

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

19 (d) Any individual engaged in the activities of an educational,
20 charitable, religious, state or local governmental body or agency, or
21 nonprofit organization where the employer-employee relationship does
22 not in fact exist or where the services are rendered to such
23 organizations gratuitously. If the individual receives reimbursement
24 in lieu of compensation for normally incurred out-of-pocket expenses
25 or receives a nominal amount of compensation per unit of voluntary
26 service rendered, an employer-employee relationship is deemed not to
27 exist for the purpose of this section or for purposes of membership
28 or qualification in any state, local government, or publicly
29 supported retirement system other than that provided under chapter
30 41.24 RCW;

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

38 (f) Any newspaper vendor, carrier, or delivery person selling or
39 distributing newspapers on the street, to offices, to businesses, or
40 from house to house and any freelance news correspondent or

1 "stringer" who, using his or her own equipment, chooses to submit
2 material for publication for free or a fee when such material is
3 published;

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

6 (h) Any individual engaged in forest protection and fire
7 prevention activities;

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

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

17 (k) Any resident, inmate, or patient of a state, county, or
18 municipal correctional, detention, treatment or rehabilitative
19 institution;

20 (l) Any individual who holds a public elective or appointive
21 office of the state, any county, city, town, municipal corporation or
22 quasi municipal corporation, political subdivision, or any
23 instrumentality thereof, or any employee of the state legislature;

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

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

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

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

37 (4) "Employer" includes any individual, partnership, association,
38 corporation, business trust, or any person or group of persons acting
39 directly or indirectly in the interest of an employer in relation to
40 an employee;

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

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

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

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

15 (1) Except for services subject to RCW 50.44.010, 50.44.020,
16 50.44.030, or 50.50.010, the term "employment" does not include
17 service performed in agricultural labor by a farm intern providing
18 his or her services under a farm internship program as established in
19 RCW 49.12.471.

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

21 (a) Services performed on a farm, in the employ of any person, in
22 connection with the cultivation of the soil, or in connection with
23 raising or harvesting any agricultural or horticultural commodity,
24 including raising, shearing, feeding, caring for, training, and
25 management of livestock, bees, poultry, and furbearing animals and
26 wildlife, or in the employ of the owner or tenant or other operator
27 of a farm in connection with the operation, management, conservation,
28 improvement, or maintenance of such farm and its tools and equipment;

29 (b) Services performed in packing, packaging, grading, storing,
30 or delivering to storage, or to market or to a carrier for
31 transportation to market, any agricultural or horticultural
32 commodity; but only if such service is performed as an incident to
33 ordinary farming operations. The exclusions from the term
34 "employment" provided in this subsection (2)(b) are not applicable
35 with respect to commercial packing houses, commercial storage
36 establishments, commercial canning, commercial freezing, or any other
37 commercial processing or with respect to services performed in
38 connection with the cultivation, raising, harvesting, and processing
39 of oysters or raising and harvesting of mushrooms; or

1 (c) Direct local sales of any agricultural or horticultural
2 commodity after its delivery to a terminal market for distribution or
3 consumption.

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

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

7 (1) The department shall adopt rules to provide special workers'
8 compensation risk class or classes for farm interns providing
9 agricultural labor pursuant to a farm internship program under RCW
10 49.12.471. The rules must include any requirements for obtaining a
11 special risk class that must be met by small farms.

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

13 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of
15 the state government and its existing public institutions, and takes
16 effect immediately.

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