

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5396

67th Legislature
2021 Regular Session

Passed by the Senate February 26,
2021

Yeas 38 Nays 9

President of the Senate

Passed by the House April 9, 2021

Yeas 57 Nays 41

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5396** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5396

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Lovelett, Saldaña, Conway, Das, Kuderer, Nguyen, and Wilson, C.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to expanding the sales and use tax exemption for
2 farmworker housing; amending RCW 82.08.02745 and 82.12.02685;
3 creating a new section; providing an effective date; and providing
4 expiration dates.

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

6 **Sec. 1.** RCW 82.08.02745 and 2014 c 140 s 18 are each amended to
7 read as follows:

8 (1) The tax levied by RCW 82.08.020 does not apply to charges
9 made for labor and services rendered by any person in respect to the
10 constructing, repairing, decorating, or improving of new or existing
11 buildings or other structures, in which at least 50 percent of
12 housing units in the development are used as ((agricultural
13 employee)) farmworker housing, or to sales of tangible personal
14 property that becomes an ingredient or component of the buildings or
15 other structures during the course of the constructing, repairing,
16 decorating, or improving the buildings or other structures. The
17 exemption is provided for all housing units in the development and is
18 available only if the buyer provides the seller with an exemption
19 certificate in a form and manner prescribed by the department by
20 rule.

1 (2) The exemption provided in this section for (~~agricultural~~
2 ~~employee~~) farmworker housing provided (~~to~~) on a year-round
3 (~~employees of the agricultural employer,~~) basis only applies if
4 that housing is built to the current building code for single-family
5 or multifamily dwellings according to the state building code,
6 chapter 19.27 RCW.

7 (3) Any (~~agricultural employee~~) farmworker housing built under
8 this section must be used according to this section for at least five
9 consecutive years from the date the housing is approved for
10 occupancy, or the full amount of tax otherwise due is immediately due
11 and payable together with interest, but not penalties, from the date
12 the housing is approved for occupancy until the date of payment. If
13 at any time (~~agricultural employee~~) farmworker housing (~~that is~~
14 ~~not located on agricultural land~~) ceases to be used in the manner
15 specified in subsection (2) of this section, the full amount of tax
16 otherwise due is immediately due and payable with interest, but not
17 penalties, from the date the housing ceases to be used as
18 (~~agricultural employee~~) farmworker housing until the date of
19 payment.

20 (4) The exemption provided in this section does not apply to
21 housing built for the occupancy of an employer, family members of an
22 employer, or persons owning stock or shares in a farm partnership or
23 corporation business. The exemption provided in this section does not
24 apply to housing built exclusively for workers in the United States
25 on an H-2A visa under the United States citizenship and immigration
26 services.

27 (5) If during any agricultural season in the qualifying five
28 years under subsection (3) of this section the housing is occupied by
29 a farmworker who does not have an H-2A visa, then the housing will be
30 considered not to be exclusively built for workers on an H-2A visa.

31 (6) For purposes of this section and RCW 82.12.02685, the
32 following definitions apply unless the context clearly requires
33 otherwise.

34 (a) (~~"Agricultural employee" or "employee" has the same meaning~~
35 ~~as given in RCW 19.30.010;~~

36 ~~(b))~~ "Agricultural employer" or "employer" has the same meaning
37 as given in RCW 19.30.010 (~~;~~ and

38 ~~(c) "Agricultural employee"), and includes any employer engaged~~
39 in aquaculture as defined in RCW 15.85.020.

40 (b) "Farm work" means services relating to:

1 (i) Cultivating the soil, raising or harvesting, or catching,
2 netting, handling, planting, drying, packing, grading, storing, or
3 preserving in its unmanufactured state any agricultural or
4 aquacultural commodity;

5 (ii) Delivering to storage, market, or a carrier for
6 transportation to market or to processing any agricultural or
7 aquacultural commodity; or

8 (iii) Working in a processing plant and directly handling
9 agricultural or aquacultural product.

10 (c) "Farmworker" means a single person, or all members of a
11 household, whether such persons are related or not, if the combined
12 household income earned from farm work is at least \$3,000 per
13 calendar year.

14 (d) "Farmworker housing" means all facilities provided by an
15 agricultural employer, housing authority, local government, state or
16 federal agency, nonprofit community or neighborhood-based
17 organization that is exempt from income tax under section 501(c) of
18 the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-
19 profit provider of housing for housing ((agricultural employees))
20 farmworkers on a year-round or seasonal basis, including bathing,
21 food handling, hand washing, laundry, and toilet facilities, single-
22 family and multifamily dwelling units and dormitories, and includes
23 labor camps under RCW 70.114A.110. (("Agricultural employee"))

24 (i) "Farmworker housing" includes:

25 (A) Housing occupied by a household with at least one member who
26 is a farmworker; and

27 (B) Housing occupied by a farmworker on a seasonal basis, where
28 the housing is not used as farmworker housing for a portion of the
29 year, such as when it is rented to the general public when not being
30 used for farmworker housing.

31 (ii) "Farmworker housing" does not include:

32 ((+i)) (A) Housing regularly provided on a commercial basis to
33 the general public;

34 ((+ii)) (B) Housing provided by a housing authority unless at
35 least eighty percent of the occupants are ((agricultural employees))
36 farmworkers whose adjusted income is less than fifty percent of
37 median family income, adjusted for household size, for the county
38 where the housing is provided; and

1 (~~(iii)~~) (C) Housing provided to (~~agricultural employees~~)
2 farmworkers providing services related to the growing, raising, or
3 producing of marijuana.

4 (7) This section expires January 1, 2032.

5 **Sec. 2.** RCW 82.12.02685 and 1997 c 438 s 2 are each amended to
6 read as follows:

7 (1) The provisions of this chapter shall not apply in respect to
8 the use of tangible personal property that becomes an ingredient or
9 component of buildings or other structures, in which at least 50
10 percent of housing units are used as (~~agricultural employee~~)
11 farmworker housing, during the course of constructing, repairing,
12 decorating, or improving the buildings or other structures by any
13 person.

14 (2) The exemption provided in this section for (~~agricultural~~
15 ~~employee~~) farmworker housing provided (~~to~~) on a year-round
16 (~~employees of the agricultural employer,~~) basis only applies if
17 that housing is built to the current building code for single-family
18 or multifamily dwellings according to the state building code,
19 chapter 19.27 RCW.

20 (3) Any (~~agricultural employee~~) farmworker housing built under
21 this section shall be used according to this section for at least
22 five consecutive years from the date the housing is approved for
23 occupancy, or the full amount of a tax otherwise due shall be
24 immediately due and payable together with interest, but not
25 penalties, from the date the housing is approved for occupancy until
26 the date of payment. If at any time (~~agricultural employee~~)
27 farmworker housing (~~that is not located on agricultural land~~)
28 ceases to be used in the manner specified in subsection (2) of this
29 section, the full amount of tax otherwise due shall be immediately
30 due and payable with interest, but not penalties, from the date the
31 housing ceases to be used as (~~agricultural employee~~) farmworker
32 housing until the date of payment.

33 (4) The exemption provided in this section shall not apply to
34 housing built for the occupancy of an employer, family members of an
35 employer, or persons owning stock or shares in a farm partnership or
36 corporation business.

37 (5) If during any agricultural season in the qualifying five
38 years under subsection (3) of this section the housing is occupied by

1 a farmworker who does not have an H-2A visa, then the housing will be
2 considered not to be exclusively built for workers on an H-2A visa.

3 (6) The definitions in RCW 82.08.02745(~~(+5)~~) (6) apply to this
4 section.

5 (7) This section expires January 1, 2032.

6 NEW SECTION. Sec. 3. (1) This section is the tax preference
7 performance statement for the tax preferences contained in sections 1
8 and 2, chapter . . ., Laws of 2021 (sections 1 and 2 of this act).
9 This performance statement is only intended to be used for subsequent
10 evaluation of the tax preferences. It is not intended to create a
11 private right of action by any party or to be used to determine
12 eligibility for preferential tax treatment.

13 (2) The legislature categorizes these tax preferences as ones
14 intended to induce certain designated behavior by taxpayers as
15 indicated in RCW 82.32.808(2) (a).

16 (3) It is the legislature's specific public policy objective to
17 increase the supply of farmworker housing.

18 (4) If a review finds that new farmworker housing is developed
19 utilizing these preferences, then the legislature intends to extend
20 the expiration date of these tax preferences.

21 (5) In order to obtain the data necessary to perform the review
22 in subsection (4) of this section, the joint legislative audit and
23 review committee may refer to any data collected by the state.

24 NEW SECTION. Sec. 4. This act takes effect October 1, 2021.

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