

PRELIMINARY REPORT:
2020 TAX EXEMPTION PERFORMANCE
REVIEWS

Farmworker Housing

LEGISLATIVE AUDITOR'S CONCLUSION:

The exemption may have incentivized construction of some types of farmworker housing. Exemption requirements may not align with other current housing practices.

July 2020

Tax exemption for building farmworker housing

The preference allows a sales and use tax exemption for housing providers who build housing for farmworkers. The exemption can apply to the construction of both seasonal and permanent housing.

The exemption was enacted in 1996 and does not have an expiration date.

JLARC staff identified at least 2,425 units of permanent housing and 29,987 seasonal beds that have been built since the exemption was enacted. It is unclear how much of this housing was built using the exemption. The exemption uses definitions that may not align with current housing practices or other funding sources, which could limit how often it is used.

Estimated Biennial Beneficiary Savings

\$3.4 Million

Tax Types

Sales and use tax RCW 82.08.02745; 82.12.02685 Applicable Statutes
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Recommendations

Legislative Auditor's Recommendation: Clarify

The Legislature should clarify the preference by **including a performance statement and determining** if the preference should align with other housing practices or be maintained in its current form.

While there is an ongoing need for farmworker housing, the preference was enacted before the Legislature required a performance statement for new preferences. The Legislature should clarify its expectations for this preference by adding a performance statement that clearly states the public policy objectives and metrics to determine whether the objectives have been met. Requirements

for the preference do not align with other current farmworker housing practices, which may limit how often it is used.

You can find more information in Recommendations.

Commissioners' Recommendation

Available on [Citizen Commission website](#) October 2020.

REVIEW DETAILS

1. Exemption for building farmworker housing

The exemption provides a sales and use tax exemption for building or improving farmworker housing

The preference allows farmworker housing providers to claim a tax exemption for building housing for farmworkers. The exemption was created in 1996 and does not have an expiration date.

Farmworker housing providers may claim the exemption

Farmworker housing providers may use a sales and use tax exemption for building, repairing, decorating, or improving housing. The tax exemption also applies to labor and services related to construction, and sales of items that become part of housing structures. Many types of entities may claim the exemption, including agricultural employers, housing authorities, religious organizations, nonprofit organizations, and for-profit businesses.

To be eligible for the tax exemption, beneficiaries must construct housing that is occupied only by farmworkers. [Housing authorities](#)¹ may claim the exemption if at least 80% of the housing is occupied by farmworkers earning less than 50% of the county's median family income. If the housing does not meet these occupancy requirements for the first five years after construction, the owner must pay back the amount of the exempted taxes.

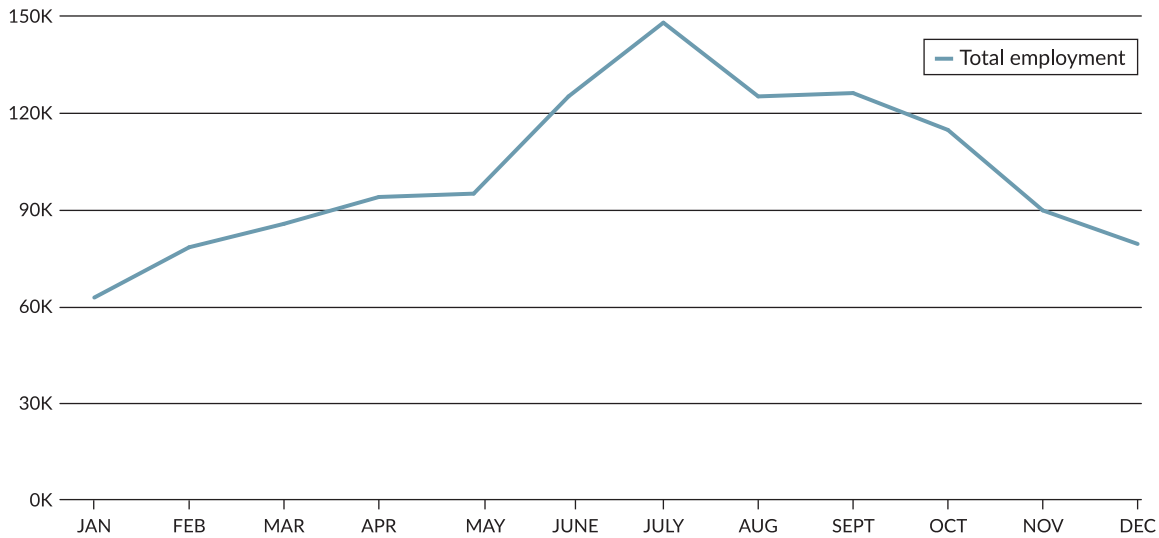
Washington's agricultural sector employs local and nonlocal seasonal workers

Employment in Washington's agricultural sector varies seasonally. In 2017, the number of agricultural jobs fluctuated from approximately 65,000 in January to approximately 145,000 in July. Apples and other fruit crops are a key driver of seasonal change in employment. These

¹Public entities created by local governments to address a shortage of safe or sanitary housing.

crops typically require large numbers of seasonal workers to harvest fruit for a short period of time. Some seasonal workers are local to the areas where they work and some are nonlocal.

Exhibit 1.1: Agricultural employment fluctuates seasonally



Source: Employment Security Department 2017 Agricultural Workforce Report. This data includes only workers covered by unemployment insurance, and excludes other workers such as those who are self-employed.

Local workers are employees who live close enough to return home at night. They may work in agriculture year-round or work in other industries during the winter. The number of local farmworkers has increased over time.

Nonlocal workers are employees who work at a location far from their home. These include domestic workers who migrate throughout the country following agricultural jobs, and workers hired under the federal H-2A visa program. The program allows agricultural employers to hire workers from other countries to fill temporary agricultural jobs, and requires the employers to provide housing to these workers. H-2A visa workers may work in the United States for up to twelve months at a time. From 2007 to 2017, the number of requests for H-2A visa workers in Washington has increased from 1,688 to 18,920. Multiple requests may correspond to a single worker, so the exact number of visa workers is unknown.

Agricultural workers live in permanent and seasonal housing

Permanent housing is built to local building codes and is suitable to live in year-round. Permanent housing can be located within city limits, on farms, or in rural areas near farms. Permanent housing is occupied by local workers who live in the same place year-round, and may be employed in the agricultural industry year-round or for part of the year.

Seasonal housing is built to a simplified statewide code, licensed and inspected by the Department of Health. Seasonal housing can only be occupied for part of each year. Seasonal housing is occupied by nonlocal farmworkers, including both domestic workers and H-2A visa workers.

Exhibit 1.2: Seasonal farmworker housing



Source: Living area, kitchen, and exterior of farmworker housing owned by Newhouse Farms.

Exhibit 1.3: Permanent farmworker housing



Source: Exterior and interior photos of Villa los Milagros in Centralia, WA from Environmental Works Community Design Center.

REVIEW DETAILS

2. Exemption intended to address farmworker housing shortage

The exemption was intended to address a stated housing shortage for approximately 57,000 farmworkers in 1996. While at least 2,425 units of permanent housing and 29,987 seasonal beds have been built since 1996, a shortage likely remains.

The exemption was intended to alleviate a housing shortage by incentivizing construction of farmworker housing

The Legislature did not state a public policy objective when it created the exemption in 1996. Public testimony to the Legislature suggested approximately 57,000 farmworkers needed housing. JLARC staff infer the objective is to incentivize farmworker housing construction and address the housing shortage.

There is no standardized central data source on farmworker housing supply or demand. To determine the number of beds or housing units built since the preference was enacted, JLARC staff combined datasets from the following organizations:

- The Department of Health (Health)
- The Department of Commerce (Commerce)
- The Washington State Housing Finance Commission (HFC)

In addition to these public agencies, stakeholders recommended reaching out to the following two housing developers who are responsible for 1888 housing units:

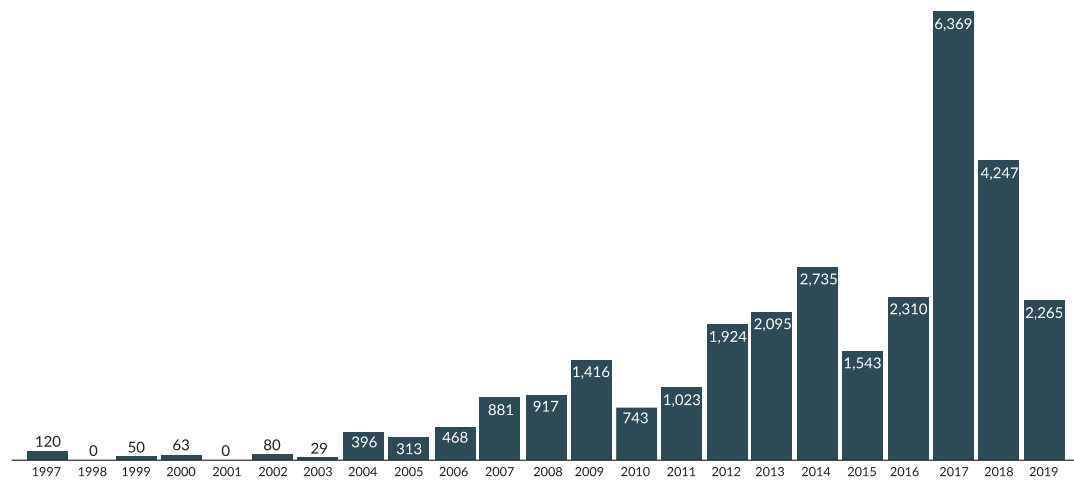
- The Office of Rural and Farmworker Housing (ORFH)
- Beacon Development

From these sources, JLARC staff identified 29,987 seasonal beds and 2,425 permanent units of housing for farmworkers that were built or permitted since the exemption was enacted in 1996. Permanent housing² is reported in units, which may range from studio apartments to units with

²Housing suitable to live in year-round and occupied by local workers.

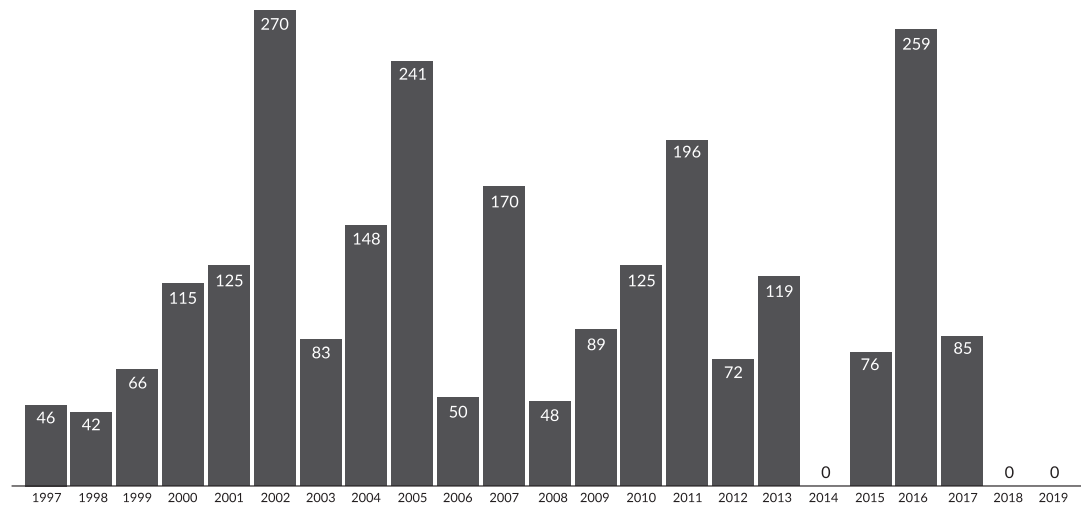
three or more bedrooms. Multiple workers may occupy these units. Seasonal housing³ is reported as individual beds, which are occupied by a single worker. The data is not connected to tax records from the Department of Revenue, and it is unclear how much of this housing was built using the exemption.

Exhibit 2.1: Identified seasonal beds built by year



Source: JLARC staff analysis of data from Commerce, Health, HFC, Beacon Development, and ORFH.

Exhibit 2.2: Identified permanent housing units built by year



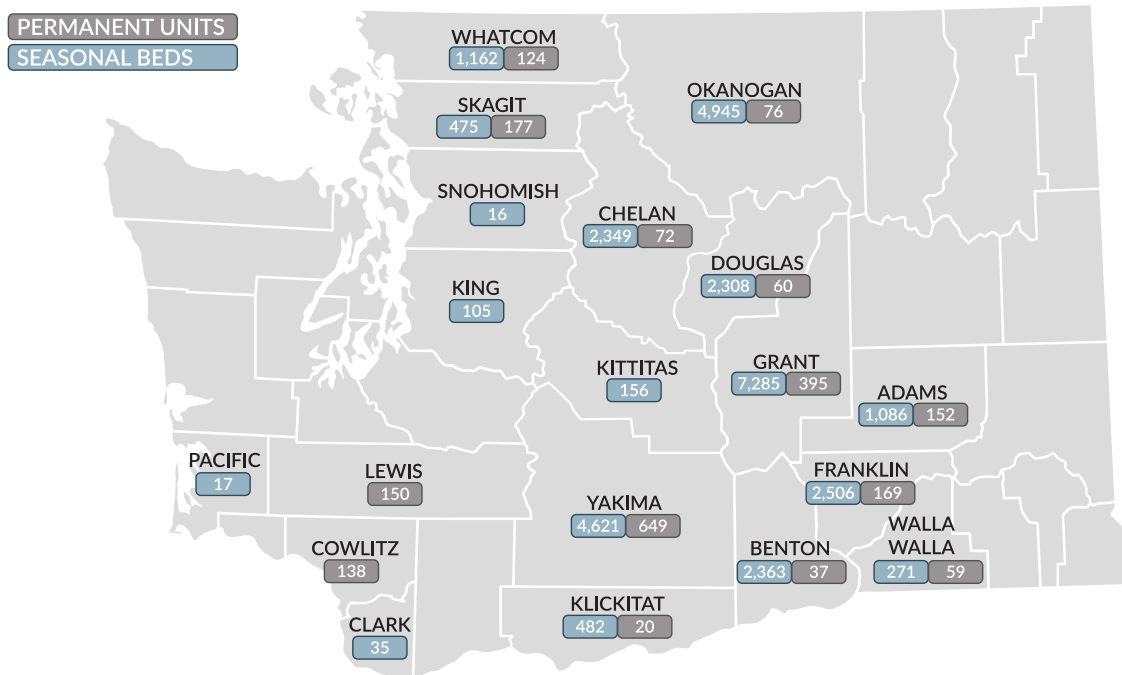
Source: JLARC staff analysis of data from Commerce, Health, HFC, Beacon Development, and ORFH.

Note: When completion year was not available, JLARC staff estimated a completion date of two years after funding was awarded.

³Housing suitable for living in part of the year, used by nonlocal workers.

Most of the agricultural housing has been built in central Washington. None of the housing has been built in the nine most eastern counties or on the Olympic Peninsula. The maps below illustrate the density of housing since 1996. The data excludes housing that was under construction at the time of this report.

Exhibit 2.3: Identified farmworker housing is concentrated in central Washington counties



Source: JLARC staff analysis of data from Health, Commerce, HFC, Beacon Development, and ORFH.

Note: The data excludes developments that were under construction at the time of this report.

Data does not capture all housing available to farmworkers

The data includes housing licensed by the Department of Health or funded through sources managed by the Department of Commerce and the Housing Trust Fund. It does not capture all housing available to farmworkers. The data does not include:

- Housing that is not licensed by Health.
- Housing built without funding from the Housing Trust Fund or the federal Low-Income Housing Tax Credit (LIHTC) program.
- Market-rate housing available to the general public that may be occupied by farmworkers.

New housing is unlikely to be enough to eliminate the most recent estimated shortage

Standardized data tracking the farmworker housing shortage is not maintained. A 2012 report completed at the direction of the Legislature estimated a shortage of housing for 15,000 local farmworker households and 36,200 nonlocal workers and their dependents. However, new housing added since 2012 is less than this shortage, while at the same time there has been further growth in farmworker employment:

- JLARC staff identified 539 units of permanent housing and 21,564 seasonal beds that have been built since 2012.
- Employment Security records note farmworker employment increased by over 10,000 jobs since 2012.

The 2019 Legislature funded a new study to estimate the farmworker housing shortage

In the 2019 Capital Budget, the Legislature provided funding for Commerce to contract for a study assessing the availability and affordability of farmworker housing. The study is expected in Fall 2020 and will provide an updated estimate of the farmworker housing shortage.

REVIEW DETAILS

3. Some housing may have been built without exemption

At least 84% of seasonal housing is required by the federal H-2A visa program and likely would have been built without the exemption. The exemption may have incentivized the remaining 16% of seasonal housing, as well as permanent housing.

Taxpayers using the exemption are not required to report information about the housing they build to the Department of Revenue (DOR). As a result, it is unknown how much housing has been built with the exemption or the extent to which it was incentivized.

Housing built for H-2A visa workers was likely not caused by the exemption

The H-2A visa program allows agricultural employers to bring foreign nationals to the United States to fill temporary agricultural jobs. In order to participate in the program, agricultural

employers are required to provide housing to all nonlocal workers (domestic and H-2A visa workers).

Since 1996, 25,262 seasonal beds (84% of total seasonal beds) have been built in connection to the H-2A visa program. Due to the federal requirement to provide housing, it is unlikely that the exemption incentivized the construction of this housing. Because the housing development data is not connected to tax records, it is unclear how much of this housing was built using the exemption.

Other housing may have been incentivized

The tax preference allows housing providers to claim an exemption from sales and use tax. Sales tax applies to certain development costs defined as retail sales.

JLARC staff analyzed cost certifications for farmworker housing developments funded by the Washington State Housing Finance Commission (HFC)⁴. Entities not claiming the exemption reported paying up to 5.6% of total development costs in sales tax. This means that housing providers claiming the exemption may have saved 5.6% for similar housing.

Stakeholders told JLARC staff that savings provided by the exemption allow housing providers to build more units, reducing the cost per unit, or to build more community amenities. The exemption may have allowed housing providers to build more units at a lower cost, or may have made some projects financially feasible that would not have been otherwise. However, it was not possible to identify when this occurred.

Total estimated beneficiary savings is at least \$3.4 million in the 2021-2023 biennium

DOR does not provide a separate deduction line for reporting sales of labor or materials for tax-exempt farmworker housing. Businesses providing labor and materials to entities building farmworker housing are not required to list it separately from other deductions. As a result, the beneficiary savings estimate is based only on sales of materials and services that the business explicitly reported were for farmworker housing. The estimate is likely lower than the actual savings because it does not include all farmworker housing developments. Businesses are not required to report information about the housing or their customers, so it is unclear how many units or beds have been built or how many organizations have used the exemption.

⁴10% of all identified developments.

Exhibit 3.1: Estimated beneficiary savings

Biennium	Fiscal Year	Deductions	Estimated Beneficiary Savings
2017-19 7/1/15-6/30/17	2018	\$29,713,000	\$2,451,000
	2019	\$17,161,000	\$1,418,000
2019-2021 7/1/17 - 6/30/19	2020	\$20,883,000	\$1,726,000
	2021	\$20,883,000	\$1,726,000
2021-23 7/1/19-6/30/21	2022	\$20,883,000	\$1,726,000
	2023	\$20,883,000	\$1,726,000
	2021-23 Biennium	\$41,766,000	\$3,452,000

Source: JLARC staff analysis of Department of Revenue tax return deduction detail for fiscal years 2018-2019. Estimates for fiscal years 2020-2023 calculated using an average of deductions detailing farmworker housing from fiscal years 2013 through 2019.

REVIEW DETAILS
4. Exemption may not align with other housing practices

The exemption requirements may not align with current housing practices and other funding source requirements

Some housing providers build housing for both farmworkers and other populations, which is not eligible for the exemption.

Some housing providers told JLARC staff that they often build housing that serves multiple populations, and some funding sources are more likely to fund developments that serve multiple populations. For example, they may build a housing development with units specifically for agricultural workers, people with disabilities, and large families. Stakeholders said that serving multiple populations can increase financial stability and local support for the development. The exemption's requirements for occupancy differ from other common housing funding sources.

Exhibit 4.1: The exemption’s requirements differ from other common housing funding sources

Program	Portion of Housing for Farmworkers
Farmworker housing sales and use tax exemption	100% must be for farmworkers, or 80% if the entity is a housing authority.
Low Income Housing Tax Credit (HFC)	Preference for developments with 75% of housing for farmworkers.
Housing Trust Fund (Commerce)	Portions vary by year. Individual budget provisos may include set-asides or preference for developments serving farmworkers.

Source: JLARC staff analysis of documentation and interviews with Commerce and HFC.

If a housing provider constructs housing that serves multiple populations, the portion for farmworkers must be separate from other housing in order to be eligible for the exemption.

Stakeholders operating seasonal farmworker housing stated that developments that only serve seasonal farmworkers may not reach occupancy rates that cover annual operating costs. Some housing operators have begun trying to use vacant housing for other purposes during the winter. For example, the Yakima Housing Authority started using a seasonal farmworker housing development as an emergency shelter for people experiencing homelessness during the winter. However, the Department of Revenue's (DOR) policy is that any use other than farmworker housing during the winter in the first five years would make a property ineligible for the exemption.

The exemption's definition of agricultural employee differs from the definition used by other funding programs. Housing eligible for funding from the Housing Finance Commission or the Housing Trust Fund may not qualify for the exemption.

"Agricultural employee" is defined differently for the exemption and other funding sources. This can limit housing providers that build farmworker housing from combining multiple funding sources and claiming the exemption. For example, some stakeholders recently began building housing for [aquaculture](#)⁵ employees. However, DOR indicated that housing development for aquaculture employees does not qualify for the exemption.

⁵Aquaculture is the breeding, rearing, and harvest of aquatic animals and plants such as fish and shellfish.

Many local farmworkers work in other industries during the winter. According to DOR, if workers employed in non-agricultural industries live in housing built with the exemption within the first five years after construction, this may disqualify the housing. The Housing Finance Commission and the Housing Trust Fund define agricultural employees based on the amount earned per year from farm work, which allows residents who work in multiple industries.

Exhibit 4.2: The exemption’s definition of agricultural employee differs from the definition used by other funding programs

Program	Definition of Farmworker	Definition of Farm Work
Farmworker housing sales and use tax exemption	Person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.	Growing, producing, or harvesting of farm or nursery products, forestation or reforestation of lands. DOR interprets this as not including aquaculture.
Low Income Housing Tax Credit (HFC)	Household with at least \$3,000 in income from farm work per year.	Lists qualifying activities related to "any agricultural or aquacultural activity."
Housing Trust Fund (Commerce)	Persons with at least \$3,000 in income from farm work per year and household income up to 50% of area median income.	Lists qualifying activities related to "any agricultural or aquacultural activity."

Source: JLARC staff analysis of documentation and interviews with DOR, Commerce, and HFC.

Due to these differences in practices and funding requirements, some projects are not eligible to use multiple funding sources in addition to the exemption.

REVIEW DETAILS
5. Applicable statutes

RCWs 82.08.02745, 82.12.02685

Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—Rules.

RCW 82.08.02745

(1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of

tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures. The exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

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

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

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

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

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

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

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110. "Agricultural employee housing" does not include:

(i) Housing regularly provided on a commercial basis to the general public;

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

(iii) Housing provided to agricultural employees providing services related to the growing, raising, or producing of marijuana.

[2014 c 140 § 18; 2007 c 54 § 14; 1997 c 438 § 1; 1996 c 117 § 1.]

NOTES:

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—1997 c 438: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 438 § 3.]

Effective date—1996 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 117 § 3.]

RCW 82.12.02685

(1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

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

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

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

(5) The definitions in RCW 82.08.02745(5) apply to this section.

[1997 c 438 § 2; 1996 c 117 § 2.]

NOTES:

Effective date—1997 c 438: See note following RCW 82.08.02745.

Effective date—1996 c 117: See note following RCW 82.08.02745.

RECOMMENDATIONS & RESPONSES

Legislative Auditor's Recommendation

Legislative Auditor recommends clarifying the preference

The Legislature should clarify the preference by **including a performance statement and determining** if the preference should align with other housing practices or be maintained in its current form.

While there is an ongoing need for farmworker housing, the preference was enacted before the Legislature required a performance statement for new preferences. The Legislature should clarify its expectations for this preference by adding a performance statement that clearly states the public policy objectives and metrics to determine whether the objectives have been met. Requirements for the preference do not align with other current farmworker housing practices, which may limit how often it is used.

Legislation Required: Yes

Fiscal Impact: Depends on Legislative action.

RECOMMENDATIONS & RESPONSES

Letter from Commission Chair

Available on [Citizen Commission website](#) October 2020.

RECOMMENDATIONS & RESPONSES

Commissioners' Recommendation

Available on [Citizen Commission website](#) October 2020.

RECOMMENDATIONS & RESPONSES

Agency Response

If applicable, available on [Citizen Commission website](#) October 2020.

MORE ABOUT THIS REVIEW

Study Questions



PROPOSED STUDY QUESTIONS Farmworker Housing

State of Washington Joint Legislative Audit and Review Committee

December 2019

JLARC to review sales and use tax exemption for farmworker housing

The 2006 Legislature directed the Joint Legislative Audit and Review Committee (JLARC) staff to conduct performance audits of tax preferences. This preference is included in the 10-year review schedule set by the Citizen Commission for Performance Measurement of Tax Preferences.



The farmworker housing preference exempts the costs of building farmworker housing from sales and use tax. The tax savings must be repaid if the buildings are not used for farmworker housing for five consecutive years. The exemption applies to organizations that construct farmworker housing, including employers, governments, and certain nonprofits. Housing authorities are only eligible if at least 80% of occupants are agricultural employees earning less than 50% of the county's family median income.

Exemption to encourage building farmworker housing and alleviate a shortage

The Legislature did not state a public policy objective for the preference. JLARC staff infer two objectives:

1. Incentivize construction of farmworker housing.
2. Alleviate a shortage of farmworker housing in the state.

In 1996 when the preference was enacted, stakeholders testified that there was a shortage of 57,000 housing beds for farmworkers.

This study will address the following questions.

1. How much housing has been built using the exemption, where is it located, and what populations does it serve?
2. What types of organizations have used the exemption?
3. What is the value of the exemption, and to what extent does it incentivize farmworker housing construction?
4. What information exists to quantify a shortage in housing for farmworkers, and is there evidence this has changed since passage of the preference?

Study Timeframe

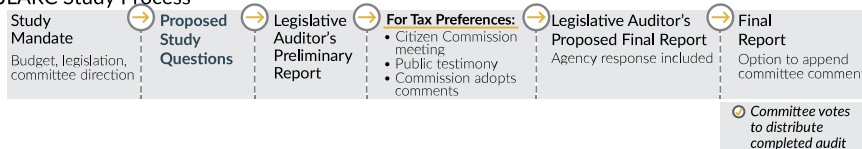
Preliminary Report: July 2020

Proposed Final Report: December 2020

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JLARC Study Process



JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

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