

# 20-07 FINAL 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.

December 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

### 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

The Commission endorses the Legislative Auditor's recommendation with comment. Testimony from non-profit housing agencies noted that the tax preference has helped to increase the supply of housing by offering an additional incentive that improves the financial viability of housing developments. As noted by Legislative Auditor, the preference can be improved by better aligning it with other funding source requirements. In addition, combined written testimony by the Office of Rural and Farmworker Housing, Catholic Charities, the Yakima Housing Authority, and Beacon Development Group offers specific changes to the preference that should be thoroughly reviewed by the Legislature.

## Committee Action to Distribute Report

On December 7, 2020 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply the Committee agrees or disagrees with the Legislative Auditor recommendations.

## 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](#)<sup>1</sup> 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

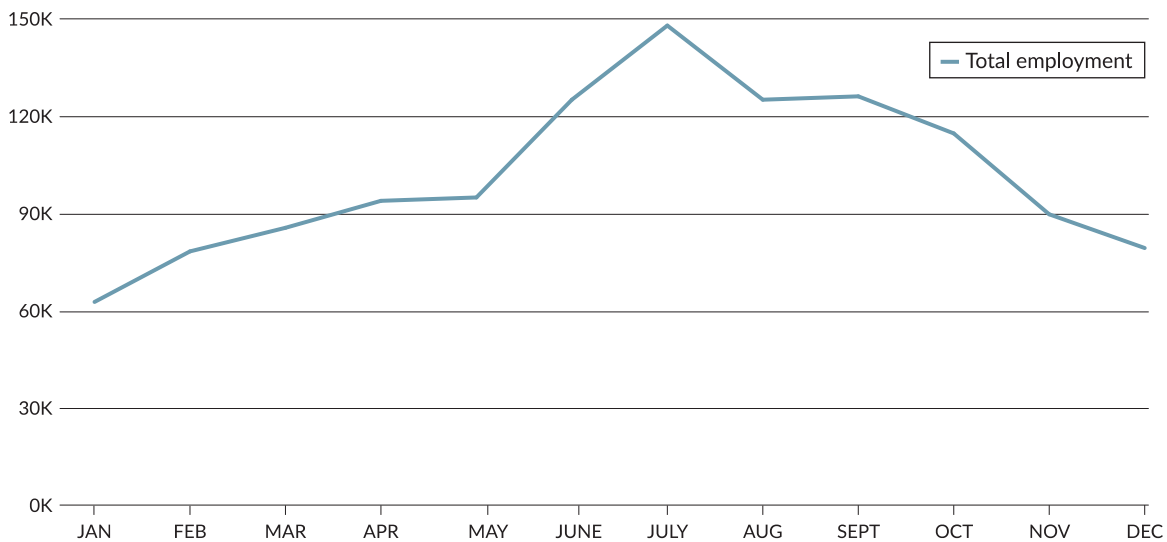
Employment in Washington's agricultural sector varies seasonally. In 2017, the number of agricultural jobs fluctuated from approximately 65,000 in January to approximately 145,000 in

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

July. Apples and other fruit crops are a key driver of seasonal change in employment. These 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.

## 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:

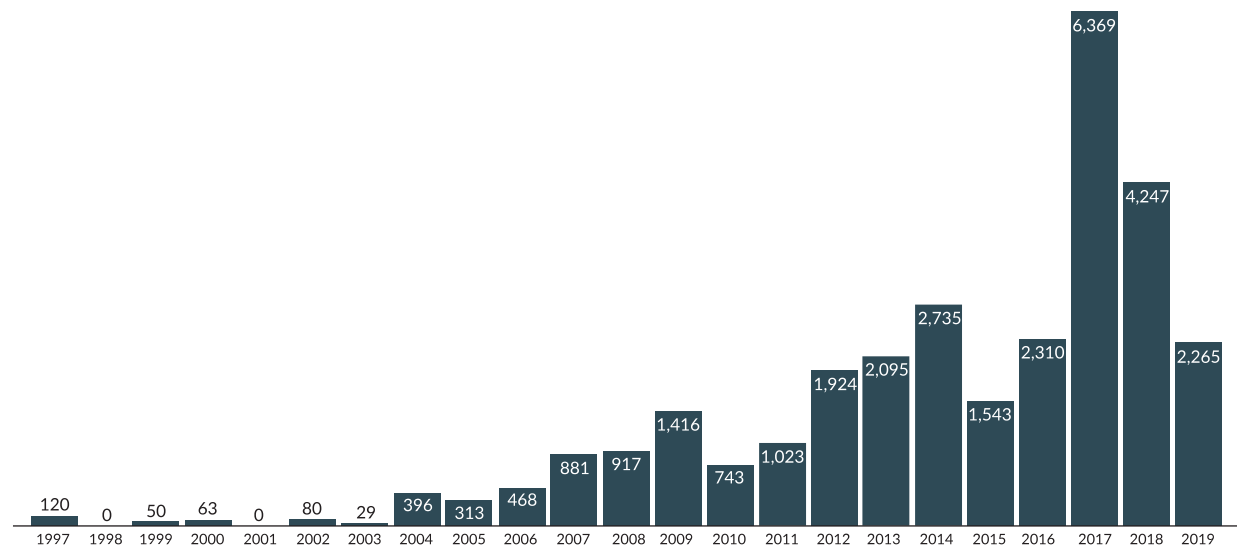
- The Department of Health (Health)
- The Department of Commerce (Commerce)
- The Washington State Housing Finance Commission (HFC)

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 housing<sup>2</sup> is reported in units, which may range from studio apartments to units with three or more bedrooms. Multiple workers may occupy these units. Seasonal housing<sup>3</sup> 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

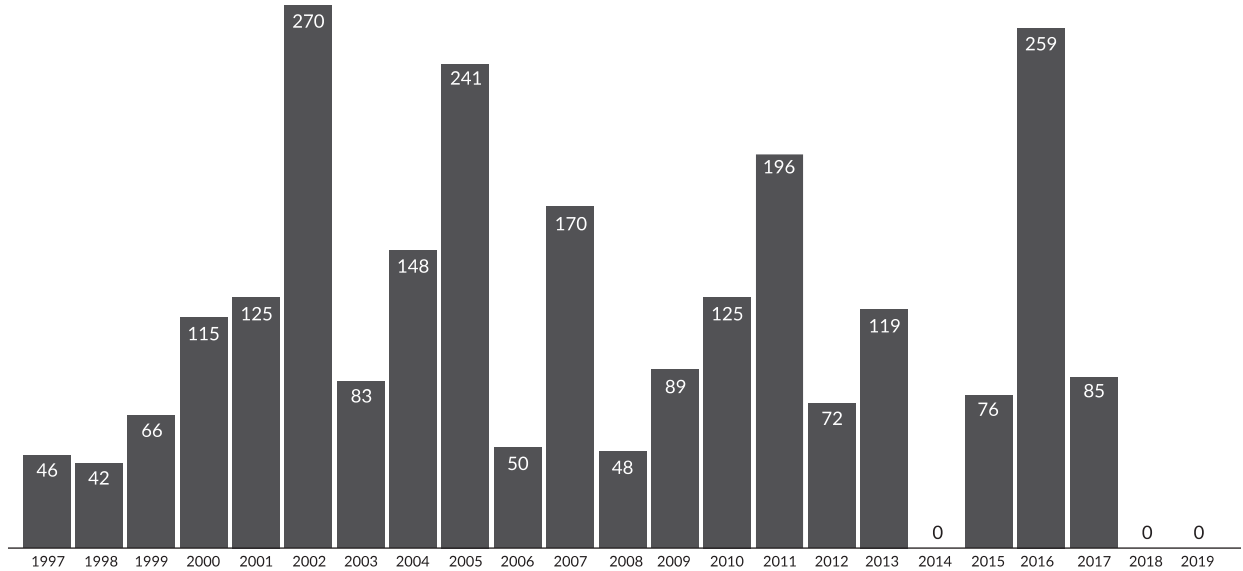


Source: JLARC staff analysis of data from Commerce, Health, HFC, Beacon Development, and ORFH.

<sup>2</sup>Housing suitable to live in year-round and occupied by local workers.

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

## Exhibit 2.2: Identified permanent housing units built by year

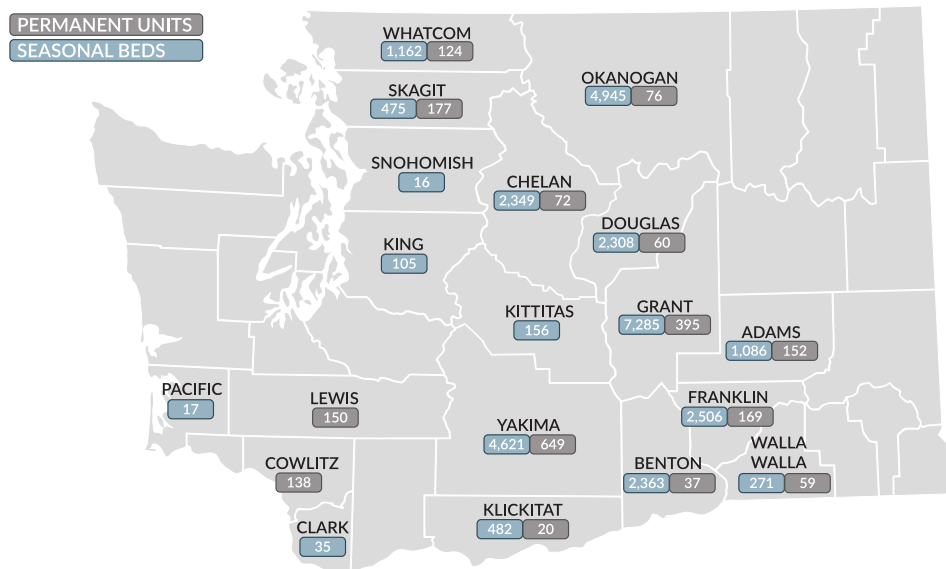


Source: JLARC staff analysis of data from Commerce, Health, HFC, Beacon Development, and ORFH.

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

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.

### **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 \(HFC\)](#)<sup>4</sup>. 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.

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<sup>4</sup>10% 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.

## 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.

Program	Portion 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](#)<sup>5</sup> employees. However, DOR indicated that housing development for aquaculture employees does not qualify for the exemption.

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	Growing, producing, or harvesting of farm or nursery products, forestation or reforestation of

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

Program	Definition of Farmworker	Definition of Farm Work
	connection with the employer's agricultural activity.	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.

## 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.

# Letter from Commission Chair

State of Washington  
**Citizen Commission for Performance Measurement of Tax Preferences**

COMMISSION MEMBERS

**Dr. Grant Forsyth** *Chair*  
Avista Corp.

**Ronald Bueing** *Vice Chair*

**Diane Lourdes Dick**  
Seattle University School of Law

**Dr. Sharon Kloko**

Evans School of Public Policy and Governance  
University of Washington

**Andi Nofziger-Meadows**  
Edmonds Education Association

NON-VOTING MEMBERS

**Senator Mark Mullet**  
*Chair*, Joint Legislative Audit and Review Committee

**Pat McCarthy**  
State Auditor

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E-mail: JLARC@leg.wa.gov | Website: www.citizen taxpref.wa.gov | Twitter: @WALegAuditor

November 2, 2020

The Honorable Representative Timm Ormsby      The Honorable Representative Ed Orcutt  
The Honorable Representative Drew Stokesbary      The Honorable Senator Patty Kuderer  
The Honorable Representative Cindy Ryu      The Honorable Senator Hans Zeiger  
The Honorable Representative Bill Jenkin      The Honorable Senator Emily Randall  
The Honorable Representative Drew Hansen      The Honorable Senator Jeff Holy  
The Honorable Representative Luanne Van Werven      The Honorable Senator Christine Rolfes  
The Honorable Representative Gael Tarleton      The Honorable Senator John Braun

Re: 2020 Tax Preference Reviews

Dear Senators and Representatives,

I am pleased to forward to you the comments that the Citizen Commission for Performance Measurement of Tax Preferences unanimously adopted for this year's review of tax preferences. The Citizen Commission consists of five voting members, with a member appointed by each of the four caucuses and the Governor's office. Notably, reviews this year included four preferences that the Legislative Auditor identified for further legislative review:

Two are not meeting their stated objectives:

- The Legislative Auditor found that a tax credit for customized employee training is not attracting new businesses and is unlikely to contribute to business retention. The Commission recommends changing the purpose to focus on assisting small existing businesses.
- The Legislative Auditor found that tax credits for hiring unemployed veterans have not met the Legislature's goal of reducing the number of unemployed veterans by 30%, and recommends modifying them to more effectively serve veterans.

Two are for industries that have changed since the preferences were enacted:

- The Legislative Auditor found that a sales tax exemption for farmworker housing may have incentivized the construction of some types of housing. However, the exemption requirements may not align with other current housing practices. The Legislative Auditor recommends clarifying the preference with a performance statement and determining if the preference should align with other housing practices.
- The Legislative Auditor found that a beer tax exemption for microbreweries has created an estimated 2 to 6 jobs in the beverage manufacturing industry and distributors receive 84% of the direct preference savings. The Washington beer industry has changed, and now has more breweries with smaller production. The Legislative Auditor recommends clarifying the

preference to include a performance statement and ensure the preference supports the intended beneficiaries.

We adopted positions similar to the Legislative Auditor for seven of the eight recommendations issued this year. Based on testimony, we adopted a different recommendation than the Legislative Auditor on the customized employee training preference. Summaries of the JLARC staff's analysis and recommendations and brief video summaries of each preference are available on the 2020 Tax Preference Reviews overview page linked [here](#). The full text of our Commissioner recommendations are included below and will be added to our proposed final report in December.

Tax preference reviews provide valuable information as the Legislature considers whether specific preferences are meeting the Legislature's policy objectives. With this year's report, there are now 14 years of tax preference evaluations available to the Legislature, comprising over 300 individual reviews.

I urge you to consider this year's and previous years' recommendations and comments on tax preference statutes in the upcoming legislative session. An interactive summary of legislative action on prior reviews is available [here](#).

As Chair of the Citizen Commission, I would be pleased to discuss the Commission's position and comments with you and any interested legislators. Please feel free to contact me ([grant.forsyth@leg.wa.gov](mailto:grant.forsyth@leg.wa.gov)) or the Legislative Auditor, Keenan Konopaski ([keenan.konopaski@leg.wa.gov](mailto:keenan.konopaski@leg.wa.gov) or 360-786-5187).

Sincerely,



Grant D. Forsyth, Chair

Citizen Commission for Performance Measurement of Tax Preferences

## Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation with comment. Testimony from non-profit housing agencies noted that the tax preference has helped to increase the supply of housing by offering an additional incentive that improves the financial viability of housing developments. As noted by Legislative Auditor, the preference can be improved by better aligning it with other funding source requirements. In addition, combined written testimony by the Office of Rural and Farmworker Housing, Catholic Charities, the Yakima Housing Authority, and Beacon Development Group offers specific changes to the preference that should be thoroughly reviewed by the Legislature.



## DOR & OFM Response



### STATE OF WASHINGTON

September 16, 2020

**TO:** Keenan Konopaski, Legislative Auditor  
Joint Legislative Audit and Review Committee

**FROM:** David Schumacher, Director  
Office of Financial Management

Handwritten signature of David Schumacher in black ink.

Vikki Smith, Director  
Department of Revenue

Handwritten signature of Vikki Smith in black ink.

**SUBJECT: JLARC PRELIMINARY REPORT ON 2020 TAX PREFERENCE  
PERFORMANCE REVIEWS**

The Office of Financial Management and Department of Revenue have reviewed the Joint Legislative Audit and Review Committee's (JLARC) preliminary report on the 2020 tax preference performance reviews.

We appreciate the thorough analysis of JLARC and the detailed review provided by the Citizen Commission for Performance Measurement of Tax Preferences. A system that provides for a continuous review of the state tax preferences is critical to ensure the state of Washington maintains a fair and equitable tax system.

While we have no specific comments on the 2020 preliminary report, we continue to support the recommendations of JLARC for the inclusion of performance statements and specific public policy objectives for all tax preferences where they don't exist in statute today.

Thank you for the opportunity to review and provide comments on this JLARC report.

# Department of Commerce Response



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

September 17, 2020

Kennan Konopaski  
Legislative Auditor  
106 11<sup>th</sup> Ave SW  
PO Box 40910  
Olympia, WA 98504-0910

Dear Mr. Konopaski:

Thank you for the opportunity to comment on the Joint Legislative Audit and Review Committee's (JLARC) assessment of the current tax exemptions available for farmworker housing construction. Department of Commerce (Commerce) relishes every opportunity to participate in the ongoing efforts to better align Washington's policies with its mission – which is to strengthen communities.

Commerce's Housing Trust Fund (HTF) has invested \$1.1 Billion in affordable housing since 1986. Many of the HTF properties have all or some of their housing units dedicated to farmworkers. Farmworker and housing projects in rural areas are particularly difficult to align funding sources, so project-specific tax savings or reductions can make these difficult to finance projects better to finance and construct.

HTF has worked diligently to ensure that its policies and procedures align with fellow housing funding providers. The two primary sources of public funding for farmworker housing are the HTF and Washington State Housing Financing Commission (the Commission). As partners in funding housing projects, including farm worker projects, it is important for our policies and occupancy requirements to be aligned and share definitions on what is considered agricultural work.

The JLARC assessment highlights two major differences between how Commerce and the Department of Revenue (DOR) define agricultural work and minimum occupancy standards. Commerce joins the Commission in their suggestions and would like to take this opportunity to make the following recommendations.

**We recommend that the tax exemption is applied to housing projects that *primarily* (not exclusively) house farmworkers.** Both HTF and the Commission finance the development of permanent farmworker housing. Some projects dedicate all units to farmworker and some can only dedicate 75% of the units. This is sometimes necessary to ensure the operational viability of a property over the long-term commitment required by the HTF and Commission contracts. Furthermore, HTF also funds *seasonal* non-permanent farmworker housing that is offered to migrant workers during the spring-fall seasons. Rather than keeping these properties vacant during the winter months, some housing providers offer them as shelter for homeless individuals

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September 17, 2020  
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and families. This serves two purposes: it allows the property to maintain viability and it provides a much needed and readily available community resource to people experiencing homelessness. Current policy interpretation of the sales tax exemption requires that these properties only serve farmworkers, all of the time. When applying the tax exemption, we recommend that state statute or policy takes into account the seasonal nature of farm work and the potential benefit to the community and state.

**We recommend that in applying the tax exemption preference, aquaculture is included in the definition of agricultural work.** Washington State has a robust aquaculture industry with 25% of the total U.S. production of shellfish according to the [Pacific Shellfish Institute](#). In fact, other departments including Department of Natural Resources, Department of Ecology, as well as Commerce and the Commission, view aquaculture as farm work. Aligning state definitions of agriculture at a statutory or policy level will remove any confusion and provide state support for workers and farms.

The sales tax exemption for farmworker housing was enacted in 1996. Our state's housing needs have changed since that time, but the need for safe and sanitary farmworker housing remains constant. The workers employed in this industry support a critical economic sector for Washington State locally and globally. Washington food and agricultural products are internationally known and sought after for their consistent high quality, variety of products, and high standard for food safety and handling. Commerce advocates for consistent definitions of agricultural work across state agencies and for alignment with the standards and approaches of HTF and the Commission, the current leaders in Washington State farmworker housing public funding.

Sincerely,



Lisa Brown  
Director

CC: Diane Klontz, Commerce  
Corina Grigoras, Commerce  
Steve Walker, WSHFC  
Bob Peterson, WSHFC  
Rachel Murata, JLARC  
Eric Thomas, JLARC

## WSHFC Response

We provided an invitation to the Washington State Housing Finance Commission (WSHFC) to comment on this report. We did not receive a formal response from the Commission.

# 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

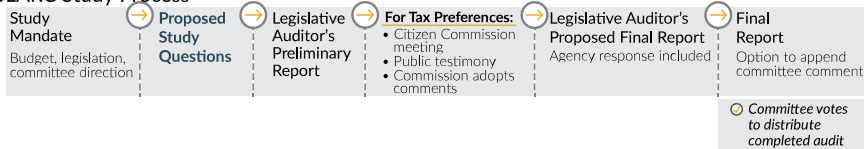
Preliminary Report: July 2020

Proposed Final Report: December 2020

#### Study Team

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#### JLARC Study Process



#### JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

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