

**ESSB 6170 - H AMD 938**

By Representative Conway

WITHDRAWN 04/26/2009

1           Beginning on page 1, after line 12, strike all of sections 101 and  
2 102 and insert the following:

3           "NEW SECTION.   **Sec. 101.** A new section is added to chapter 82.08  
4 RCW to read as follows:

5           (1)(a) Except as provided in section 103 of this act, purchasers  
6 who have paid the tax imposed by RCW 82.08.020 on machinery and  
7 equipment used directly in generating electricity consumed exclusively  
8 in Washington using fuel cells, wind, sun, biomass energy, tidal or  
9 wave energy, geothermal resources, anaerobic digestion, technology that  
10 converts otherwise lost energy from exhaust, or landfill gas as the  
11 principal source of power, or to sales of or charges made for labor and  
12 services rendered in respect to installing such machinery and  
13 equipment, are eligible for an exemption as provided in this section,  
14 but only if the purchaser develops with such machinery, equipment, and  
15 labor a facility capable of generating not less than one thousand watts  
16 of electricity.

17           (b) Beginning on July 1, 2009, through June 30, 2011, the tax  
18 levied by RCW 82.08.020 does not apply to the sale of machinery and  
19 equipment described in (a) of this subsection that are used directly in  
20 generating electricity consumed exclusively in Washington or to sales  
21 of or charges made for labor and services rendered in respect to  
22 installing such machinery and equipment.

23           (c) Beginning on July 1, 2011, through June 30, 2013, the amount of  
24 the exemption under this subsection (1) is equal to seventy-five  
25 percent of the state and local sales tax paid. The purchaser is  
26 eligible for an exemption under this subsection (1)(c) in the form of  
27 a remittance.

28           (2) For purposes of this section and section 102 of this act, the  
29 following definitions apply:

1 (a) "Biomass energy" includes: (i) Byproducts of pulping and wood  
2 manufacturing process; (ii) animal waste; (iii) solid organic fuels  
3 from wood; (iv) forest or field residues; (v) wooden demolition or  
4 construction debris; (vi) food waste; (vii) liquors derived from algae  
5 and other sources; (viii) dedicated energy crops; (ix) biosolids; and  
6 (x) yard waste. "Biomass energy" does not include wood pieces that  
7 have been treated with chemical preservatives such as creosote,  
8 pentachlorophenol, or copper-chrome-arsenic; wood from old growth  
9 forests; or municipal solid waste.

10 (b) "Fuel cell" means an electrochemical reaction that generates  
11 electricity by combining atoms of hydrogen and oxygen in the presence  
12 of a catalyst.

13 (c) "Landfill gas" means biomass fuel, of the type qualified for  
14 federal tax credits under Title 26 U.S.C. Sec. 29 of the federal  
15 internal revenue code, collected from a "landfill" as defined under RCW  
16 70.95.030.

17 (d)(i) "Machinery and equipment" means fixtures, devices, and  
18 support facilities that are integral and necessary to the generation of  
19 electricity using fuel cells, wind, sun, biomass energy, tidal or wave  
20 energy, geothermal resources, anaerobic digestion, technology that  
21 converts otherwise lost energy from exhaust, or landfill gas as the  
22 principal source of power.

23 (ii) "Machinery and equipment" does not include: (A) Hand-powered  
24 tools; (B) property with a useful life of less than one year; (C)  
25 repair parts required to restore machinery and equipment to normal  
26 working order; (D) replacement parts that do not increase productivity,  
27 improve efficiency, or extend the useful life of machinery and  
28 equipment; (E) buildings; or (F) building fixtures that are not  
29 integral and necessary to the generation of electricity that are  
30 permanently affixed to and become a physical part of a building.

31 (e) "Purchaser" means a qualifying utility purchasing machinery or  
32 equipment, or a person contracting with a qualifying utility for the  
33 sale of electric power generated by a facility containing machinery and  
34 equipment.

35 (f) "Qualifying utility" means a utility subject to renewable  
36 resource target requirements under chapter 19.285 RCW.

37 (3)(a) Machinery and equipment is "used directly" in generating  
38 electricity by wind energy, solar energy, biomass energy, tidal or wave

1 energy, geothermal resources, anaerobic digestion, technology that  
2 converts otherwise lost energy from exhaust, or landfill gas power if  
3 it provides any part of the process that captures the energy of the  
4 wind, sun, biomass energy, tidal or wave energy, geothermal resources,  
5 anaerobic digestion, technology that converts otherwise lost energy  
6 from exhaust, or landfill gas, converts that energy to electricity, and  
7 stores, transforms, or transmits that electricity for entry into or  
8 operation in parallel with electric transmission and distribution  
9 systems.

10 (b) Machinery and equipment is "used directly" in generating  
11 electricity by fuel cells if it provides any part of the process that  
12 captures the energy of the fuel, converts that energy to electricity,  
13 and stores, transforms, or transmits that electricity for entry into or  
14 operation in parallel with electric transmission and distribution  
15 systems.

16 (4)(a) A purchaser claiming an exemption in the form of a  
17 remittance under subsection (1)(c) of this section must pay the tax  
18 imposed by RCW 82.08.020 and all applicable local sales taxes imposed  
19 under the authority of chapters 82.14 and 81.104 RCW. The purchaser  
20 may then apply to the department for remittance in a form and manner  
21 prescribed by the department. A purchaser may not apply for a  
22 remittance under this section more frequently than once per quarter.  
23 The purchaser must specify the amount of exempted tax claimed and the  
24 qualifying purchases for which the exemption is claimed. The purchaser  
25 must retain, in adequate detail, records to enable the department to  
26 determine whether the purchaser is entitled to an exemption under this  
27 section, including: Invoices; proof of tax paid; and documents  
28 describing the machinery and equipment.

29 (b) The department must determine eligibility under this section  
30 based on the information provided by the purchaser, which is subject to  
31 audit verification by the department. The department must on a  
32 quarterly basis remit exempted amounts to qualifying purchasers who  
33 submitted applications during the previous quarter.

34 (5) This section expires July 1, 2013.

35 NEW SECTION. **Sec. 102.** A new section is added to chapter 82.12  
36 RCW to read as follows:

37 (1)(a) Except as provided in section 104 of this act, purchasers

1 who have paid the tax imposed by RCW 82.12.020 on machinery and  
2 equipment used directly in generating electricity consumed exclusively  
3 in Washington using fuel cells, wind, sun, biomass energy, tidal or  
4 wave energy, geothermal resources, anaerobic digestion, technology that  
5 converts otherwise lost energy from exhaust, or landfill gas as the  
6 principal source of power, or to sales of or charges made for labor and  
7 services rendered in respect to installing such machinery and  
8 equipment, are eligible for an exemption as provided in this section,  
9 but only if the purchaser develops with such machinery, equipment, and  
10 labor a facility capable of generating not less than one thousand watts  
11 of electricity.

12 (b) Beginning on July 1, 2009, through June 30, 2011, the  
13 provisions of this chapter do not apply in respect to the use of  
14 machinery and equipment described in (a) of this subsection that are  
15 used directly in generating electricity consumed exclusively in  
16 Washington or to sales of or charges made for labor and services  
17 rendered in respect to installing such machinery and equipment.

18 (c) Beginning on July 1, 2011, through June 30, 2013, the amount of  
19 the exemption under this subsection (1) is equal to seventy-five  
20 percent of the state and local sales tax paid. The purchaser is  
21 eligible for an exemption under this subsection (1)(c) in the form of  
22 a remittance.

23 (2)(a) A purchaser claiming an exemption in the form of a  
24 remittance under subsection (1)(c) of this section must pay the tax  
25 imposed by RCW 82.12.020 and all applicable local use taxes imposed  
26 under the authority of chapters 82.14 and 81.104 RCW. The purchaser  
27 may then apply to the department for remittance in a form and manner  
28 prescribed by the department. A purchaser may not apply for a  
29 remittance under this section more frequently than once per quarter.  
30 The purchaser must specify the amount of exempted tax claimed and the  
31 qualifying purchases or acquisitions for which the exemption is  
32 claimed. The purchaser must retain, in adequate detail, records to  
33 enable the department to determine whether the purchaser is entitled to  
34 an exemption under this section, including: Invoices; proof of tax  
35 paid; and documents describing the machinery and equipment.

36 (b) The department must determine eligibility under this section  
37 based on the information provided by the purchaser, which is subject to

1 audit verification by the department. The department must on a  
2 quarterly basis remit exempted amounts to qualifying purchasers who  
3 submitted applications during the previous quarter.

4 (3) Purchases exempt under section 101 of this act are also exempt  
5 from the tax imposed under RCW 82.12.020.

6 (4) The definitions in section 101 of this act apply to this  
7 section.

8 (5) This section expires June 30, 2013."

EFFECT: Specifies that the sales and use tax incentive may be taken by a qualifying utility subject to renewable resource target requirements, or a person contracting with a qualifying utility for the sale of electric power generated by a facility containing machinery and equipment, provided that the electricity generated by machinery and equipment is consumed exclusively in Washington.

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