
SENATE BILL 5394

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By Senators Hasegawa, Conway, Kohl-Welles, Kline, Keiser, Cleveland, and Chase

Read first time 01/29/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to requiring use of resident workers on public
2 works; amending RCW 82.60.025, 82.75.010, 82.82.010, 82.08.820,
3 82.08.900, 82.08.955, and 82.12.955; reenacting and amending RCW
4 82.63.010; adding a new section to chapter 39.12 RCW; creating a new
5 section; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.12 RCW
8 to read as follows:

9 (1) The specifications for every public works contract must contain
10 a provision requiring that at least seventy-five percent of the labor
11 hours be performed by Washington residents. Residents of a state
12 bordering on Washington may be considered Washington residents for
13 purposes of this section if the bordering state does not restrict the
14 right of a Washington resident to be employed on public works in the
15 bordering state.

16 (2) If a sufficient number of qualified Washington residents are
17 unavailable, the contractor or subcontractor must apply to the
18 department of labor and industries for a waiver from the requirements
19 of this section. The department of labor and industries may grant a

1 waiver if it determines, in consultation with the employment security
2 department, that: (a) The contractor or subcontractor made a good
3 faith effort to recruit and hire Washington residents; and (b) a
4 sufficient number of qualified Washington residents are unavailable.

5 (3)(a) If, following a hearing under chapter 34.05 RCW, the
6 director of labor and industries determines that a contractor or
7 subcontractor violated this section, the contractor or subcontractor is
8 subject to a civil penalty of at least one thousand dollars per
9 displaced resident worker or an amount equal to twenty percent of the
10 amount of the prevailing wages that would have been paid to displaced
11 resident workers, whichever is greater. The contractor or
12 subcontractor may not bid or have a bid considered on any public works
13 contract until the civil penalty is paid in full. Civil penalties must
14 be deposited in the public works administration account. Unpaid civil
15 penalties constitute a lien against the bonds and retainage as provided
16 in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

17 (b) If the director of labor and industries determines that a
18 contractor or subcontractor violated this section a second time within
19 a five-year period, the contractor or subcontractor is subject to the
20 sanctions prescribed in (a) of this subsection and, as an additional
21 sanction, may not bid on any public works contract for two years.

22 (4) For purposes of this section:

23 (a) "Public work" has the same meaning as in RCW 39.04.010 and also
24 includes all publicly subsidized work, construction, alterations,
25 repairs, or improvements other than ordinary maintenance. Work is
26 subsidized by the public if:

27 (i) One or more parties to the contract received or will receive a
28 tax preference under chapter 82.60, 82.63, 82.75, or 82.82 RCW, or RCW
29 82.08.820, 82.08.900, 82.08.955, 82.12.900, or 82.12.955;

30 (ii) One or more parties to the contract received or will receive
31 a loan from the state or any county, municipality, or political
32 subdivision;

33 (iii) The work occurs on land that a party to the contract leases
34 from the state or any county, municipality, or political subdivision;
35 or

36 (iv) The work occurs on land that a party to the contract purchased
37 from the state or any county, municipality, or political subdivision

1 for less than fair market value as determined by the state, county,
2 municipality, or political subdivision at the time of the sale.

3 (b) "Subsidy recipient" means the private party to a contract for
4 subsidized public work who received a tax preference, received a public
5 loan, leases public land, or purchased public land as described in (a)
6 of this subsection.

7 **Sec. 2.** RCW 82.60.025 and 2010 1st sp.s. c 16 s 4 are each amended
8 to read as follows:

9 The lessor or owner of a qualified building is not eligible for a
10 deferral unless:

11 (1) The lessor or owner complies with the requirements of section
12 1 of this act; and

13 (2) The underlying ownership of the buildings, machinery, and
14 equipment vests exclusively in the same person; or

15 (~~(+2)~~) (3)(a) The lessor by written contract agrees to pass the
16 economic benefit of the deferral to the lessee;

17 (b) The lessee that receives the economic benefit of the deferral
18 agrees in writing with the department to complete the annual survey
19 required under RCW 82.60.070; and

20 (c) The economic benefit of the deferral passed to the lessee is no
21 less than the amount of tax deferred by the lessor and is evidenced by
22 written documentation of any type of payment, credit, or other
23 financial arrangement between the lessor or owner of the qualified
24 building and the lessee.

25 **Sec. 3.** RCW 82.63.010 and 2009 c 268 s 2 are each reenacted and
26 amended to read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Advanced computing" means technologies used in the designing
30 and developing of computing hardware and software, including
31 innovations in designing the full spectrum of hardware from hand-held
32 calculators to super computers, and peripheral equipment.

33 (2) "Advanced materials" means materials with engineered properties
34 created through the development of specialized processing and synthesis
35 technology, including ceramics, high value-added metals, electronic
36 materials, composites, polymers, and biomaterials.

1 (3) "Applicant" means a person applying for a tax deferral under
2 this chapter.

3 (4) "Biotechnology" means the application of technologies, such as
4 recombinant DNA techniques, biochemistry, molecular and cellular
5 biology, genetics and genetic engineering, cell fusion techniques, and
6 new bioprocesses, using living organisms, or parts of organisms, to
7 produce or modify products, to improve plants or animals, to develop
8 microorganisms for specific uses, to identify targets for small
9 molecule pharmaceutical development, or to transform biological systems
10 into useful processes and products or to develop microorganisms for
11 specific uses.

12 (5) "Department" means the department of revenue.

13 (6) "Electronic device technology" means technologies involving
14 microelectronics; semiconductors; electronic equipment and
15 instrumentation; radio frequency, microwave, and millimeter
16 electronics; optical and optic-electrical devices; and data and digital
17 communications and imaging devices.

18 (7) "Eligible investment project" means an investment project which
19 either initiates a new operation, or expands or diversifies a current
20 operation by expanding, renovating, or equipping an existing facility.
21 The lessor or owner of the qualified building is not eligible for a
22 deferral unless:

23 (a) The lessor or owner complies with the requirements of section
24 1 of this act; and

25 (b) The underlying ownership of the buildings, machinery, and
26 equipment vests exclusively in the same person; or

27 ((+b+)) (c)(i) The lessor by written contract agrees to pass the
28 economic benefit of the deferral to the lessee;

29 (ii) The lessee that receives the economic benefit of the deferral
30 agrees in writing with the department to complete the annual survey
31 required under RCW 82.63.020(2); and

32 (iii) The economic benefit of the deferral passed to the lessee is
33 no less than the amount of tax deferred by the lessor and is evidenced
34 by written documentation of any type of payment, credit, or other
35 financial arrangement between the lessor or owner of the qualified
36 building and the lessee.

37 (8) "Environmental technology" means assessment and prevention of

1 threats or damage to human health or the environment, environmental
2 cleanup, and the development of alternative energy sources.

3 (9)(a) "Initiation of construction" means the date that a building
4 permit is issued under the building code adopted under RCW 19.27.031
5 for:

6 (i) Construction of the qualified building, if the underlying
7 ownership of the building vests exclusively with the person receiving
8 the economic benefit of the deferral;

9 (ii) Construction of the qualified building, if the economic
10 benefits of the deferral are passed to a lessee as provided in
11 subsection (7) of this section; or

12 (iii) Tenant improvements for a qualified building, if the economic
13 benefits of the deferral are passed to a lessee as provided in
14 subsection (7) of this section.

15 (b) "Initiation of construction" does not include soil testing,
16 site clearing and grading, site preparation, or any other related
17 activities that are initiated before the issuance of a building permit
18 for the construction of the foundation of the building.

19 (c) If the investment project is a phased project, "initiation of
20 construction" shall apply separately to each phase.

21 (10) "Investment project" means an investment in qualified
22 buildings or qualified machinery and equipment, including labor and
23 services rendered in the planning, installation, and construction or
24 improvement of the project.

25 (11) "Multiple qualified buildings" means qualified buildings
26 leased to the same person when such structures: (a) Are located within
27 a five-mile radius; and (b) the initiation of construction of each
28 building begins within a sixty-month period.

29 (12) "Person" has the meaning given in RCW 82.04.030 and includes
30 state universities as defined in RCW 28B.10.016.

31 (13) "Pilot scale manufacturing" means design, construction, and
32 testing of preproduction prototypes and models in the fields of
33 biotechnology, advanced computing, electronic device technology,
34 advanced materials, and environmental technology other than for
35 commercial sale. As used in this subsection, "commercial sale"
36 excludes sales of prototypes or sales for market testing if the total
37 gross receipts from such sales of the product, service, or process do
38 not exceed one million dollars.

1 (14) "Qualified buildings" means construction of new structures,
2 and expansion or renovation of existing structures for the purpose of
3 increasing floor space or production capacity used for pilot scale
4 manufacturing or qualified research and development, including plant
5 offices and other facilities that are an essential or an integral part
6 of a structure used for pilot scale manufacturing or qualified research
7 and development. If a building or buildings are used partly for pilot
8 scale manufacturing or qualified research and development, and partly
9 for other purposes, the applicable tax deferral shall be determined by
10 apportionment of the costs of construction under rules adopted by the
11 department. Such rules may include provisions for determining the
12 amount of the deferral based on apportionment of costs of construction
13 of an investment project consisting of a building or multiple
14 buildings, where qualified research and development or pilot scale
15 manufacturing activities are shifted within a building or from one
16 building to another building.

17 (15) "Qualified machinery and equipment" means fixtures, equipment,
18 and support facilities that are an integral and necessary part of a
19 pilot scale manufacturing or qualified research and development
20 operation. "Qualified machinery and equipment" includes: Computers;
21 software; data processing equipment; laboratory equipment,
22 instrumentation, and other devices used in a process of experimentation
23 to develop a new or improved pilot model, plant process, product,
24 formula, invention, or similar property; manufacturing components such
25 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;
26 vats, tanks, and fermenters; operating structures; and all other
27 equipment used to control, monitor, or operate the machinery. For
28 purposes of this chapter, qualified machinery and equipment must be
29 either new to the taxing jurisdiction of the state or new to the
30 certificate holder, except that used machinery and equipment may be
31 treated as qualified machinery and equipment if the certificate holder
32 either brings the machinery and equipment into Washington or makes a
33 retail purchase of the machinery and equipment in Washington or
34 elsewhere.

35 (16) "Qualified research and development" means research and
36 development performed within this state in the fields of advanced
37 computing, advanced materials, biotechnology, electronic device
38 technology, and environmental technology.

1 (17) "Recipient" means a person receiving a tax deferral under this
2 chapter.

3 (18) "Research and development" means activities performed to
4 discover technological information, and technical and nonroutine
5 activities concerned with translating technological information into
6 new or improved products, processes, techniques, formulas, inventions,
7 or software. The term includes exploration of a new use for an
8 existing drug, device, or biological product if the new use requires
9 separate licensing by the federal food and drug administration under
10 chapter 21, C.F.R., as amended. The term does not include adaptation
11 or duplication of existing products where the products are not
12 substantially improved by application of the technology, nor does the
13 term include surveys and studies, social science and humanities
14 research, market research or testing, quality control, sale promotion
15 and service, computer software developed for internal use, and research
16 in areas such as improved style, taste, and seasonal design.

17 **Sec. 4.** RCW 82.75.010 and 2010 c 114 s 145 are each amended to
18 read as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

21 (1) "Applicant" means a person applying for a tax deferral under
22 this chapter.

23 (2) "Biotechnology" means a technology based on the science of
24 biology, microbiology, molecular biology, cellular biology,
25 biochemistry, or biophysics, or any combination of these, and includes,
26 but is not limited to, recombinant DNA techniques, genetics and genetic
27 engineering, cell fusion techniques, and new bioprocesses, using living
28 organisms, or parts of organisms.

29 (3) "Biotechnology product" means any virus, therapeutic serum,
30 antibody, protein, toxin, antitoxin, vaccine, blood, blood component or
31 derivative, allergenic product, or analogous product produced through
32 the application of biotechnology that is used in the prevention,
33 treatment, or cure of diseases or injuries to humans.

34 (4) "Department" means the department of revenue.

35 (5)(a) "Eligible investment project" means an investment in
36 qualified buildings or qualified machinery and equipment, including

1 labor and services rendered in the planning, installation, and
2 construction of the project.

3 (b) The lessor or owner of a qualified building is not eligible for
4 a deferral unless:

5 (i) The lessor or owner complies with the requirements of section
6 1 of this act; and

7 (ii) The underlying ownership of the buildings, machinery, and
8 equipment vests exclusively in the same person; or

9 (~~(ii)~~) (iii)(A) The lessor by written contract agrees to pass the
10 economic benefit of the deferral to the lessee;

11 (B) The lessee that receives the economic benefit of the deferral
12 agrees in writing with the department to complete the annual survey
13 required under RCW 82.75.070; and

14 (C) The economic benefit of the deferral passed to the lessee is no
15 less than the amount of tax deferred by the lessor and is evidenced by
16 written documentation of any type of payment, credit, or other
17 financial arrangement between the lessor or owner of the qualified
18 building and the lessee.

19 (6)(a) "Initiation of construction" means the date that a building
20 permit is issued under the building code adopted under RCW 19.27.031
21 for:

22 (i) Construction of the qualified building, if the underlying
23 ownership of the building vests exclusively with the person receiving
24 the economic benefit of the deferral;

25 (ii) Construction of the qualified building, if the economic
26 benefits of the deferral are passed to a lessee as provided in
27 subsection (5)(b)(ii)(A) of this section; or

28 (iii) Tenant improvements for a qualified building, if the economic
29 benefits of the deferral are passed to a lessee as provided in
30 subsection (5)(b)(ii)(A) of this section.

31 (b) "Initiation of construction" does not include soil testing,
32 site clearing and grading, site preparation, or any other related
33 activities that are initiated before the issuance of a building permit
34 for the construction of the foundation of the building.

35 (c) If the investment project is a phased project, "initiation of
36 construction" applies separately to each phase.

37 (7) "Manufacturing" has the meaning provided in RCW 82.04.120.

1 (8) "Medical device" means an instrument, apparatus, implement,
2 machine, contrivance, implant, in vitro reagent, or other similar or
3 related article, including any component, part, or accessory, that is
4 designed or developed and:

5 (a) Recognized in the national formulary, or the United States
6 pharmacopeia, or any supplement to them;

7 (b) Intended for use in the diagnosis of disease, or in the cure,
8 mitigation, treatment, or prevention of disease or other conditions in
9 human beings or other animals; or

10 (c) Intended to affect the structure or any function of the body of
11 human beings or other animals, and which does not achieve any of its
12 primary intended purposes through chemical action within or on the body
13 of human beings or other animals and which is not dependent upon being
14 metabolized for the achievement of any of its principal intended
15 purposes.

16 (9) "Person" has the meaning provided in RCW 82.04.030.

17 (10) "Qualified buildings" means construction of new structures,
18 and expansion or renovation of existing structures for the purpose of
19 increasing floor space or production capacity used for biotechnology
20 product manufacturing or medical device manufacturing activities,
21 including plant offices, commercial laboratories for process
22 development, quality assurance and quality control, and warehouses or
23 other facilities for the storage of raw material or finished goods if
24 the facilities are an essential or an integral part of a factory,
25 plant, or laboratory used for biotechnology product manufacturing or
26 medical device manufacturing. If a building is used partly for
27 biotechnology product manufacturing or medical device manufacturing and
28 partly for other purposes, the applicable tax deferral must be
29 determined by apportionment of the costs of construction under rules
30 adopted by the department.

31 (11) "Qualified machinery and equipment" means all new industrial
32 and research fixtures, equipment, and support facilities that are an
33 integral and necessary part of a biotechnology product manufacturing or
34 medical device manufacturing operation. "Qualified machinery and
35 equipment" includes: Computers; software; data processing equipment;
36 laboratory equipment; manufacturing components such as belts, pulleys,
37 shafts, and moving parts; molds, tools, and dies; operating structures;
38 and all equipment used to control or operate the machinery.

1 (12) "Recipient" means a person receiving a tax deferral under this
2 chapter.

3 **Sec. 5.** RCW 82.82.010 and 2008 c 15 s 1 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Applicant" means a person applying for a tax deferral under
8 this chapter.

9 (2) "Corporate headquarters" means a facility or facilities where
10 corporate staff employees are physically employed, and where the
11 majority of the company's management services are handled either on a
12 regional or a national basis. Company management services may include:
13 Accounts receivable and payable, accounting, data processing,
14 distribution management, employee benefit plan, financial and
15 securities accounting, information technology, insurance, legal,
16 merchandising, payroll, personnel, purchasing procurement, planning,
17 reporting and compliance, research and development, tax, treasury, or
18 other headquarters-related services. "Corporate headquarters" does not
19 include a facility or facilities used for manufacturing, wholesaling,
20 or warehousing.

21 (3) "Department" means the department of revenue.

22 (4) "Eligible area" means a designated community empowerment zone
23 approved under RCW 43.31C.020.

24 (5)(a) "Eligible investment project" means an investment project in
25 a qualified building or buildings in an eligible area, as defined in
26 subsection (4) of this section, which will have employment at the
27 qualified building or buildings of at least three hundred employees in
28 qualified employment positions, each of whom must earn for the year
29 reported at least the average annual wage for the state for that year
30 as determined by the employment security department.

31 (b) The lessor or owner of a qualified building or buildings is not
32 eligible for a deferral unless:

33 (i) The lessor or owner complies with the requirements of section
34 1 of this act; and

35 (ii) The underlying ownership of the building or buildings vests
36 exclusively in the same person; or

1 (~~(ii)~~) (iii)(A) The lessor by written contract agrees to pass the
2 economic benefit of the deferral to the lessee;

3 (B) The lessee that receives the economic benefit of the deferral
4 agrees in writing with the department to complete the annual survey
5 required under RCW 82.82.020; and

6 (C) The economic benefit of the deferral passed to the lessee is no
7 less than the amount of tax deferred by the lessor and is evidenced by
8 written documentation of any type of payment, credit, or other
9 financial arrangement between the lessor or owner of the qualified
10 building and the lessee.

11 (6) "Investment project" means a capital investment of at least
12 thirty million dollars in a qualified building or buildings including
13 tangible personal property and fixtures that will be incorporated as an
14 ingredient or component of such buildings during the course of their
15 construction, and including labor and services rendered in the
16 planning, installation, and construction of the project.

17 (7) "Manufacture" has the same meaning as provided in RCW
18 82.04.120.

19 (8) "Operationally complete" means a date no later than one year
20 from the date the project is issued an occupancy permit by the local
21 permit issuing authority.

22 (9) "Person" has the same meaning as provided in RCW 82.04.030.

23 (10) "Qualified building or buildings" means construction of a new
24 structure or structures or expansion of an existing structure or
25 structures to be used for corporate headquarters. If a building is
26 used partly for corporate headquarters and partly for other purposes,
27 the applicable tax deferral is determined by apportionment of the costs
28 of construction under rules adopted by the department.

29 (11) "Qualified employment position" means a permanent full-time
30 employee employed in the eligible investment project during the entire
31 tax year. The term "entire tax year" means a full-time position that
32 is filled for a period of twelve consecutive months. The term "full-
33 time" means at least thirty-five hours a week, four hundred fifty-five
34 hours a quarter, or one thousand eight hundred twenty hours a year.

35 (12) "Recipient" means a person receiving a tax deferral under this
36 chapter.

37 (13) "Warehouse" means a building or structure, or any part

1 thereof, in which goods, wares, or merchandise are received for storage
2 for compensation.

3 (14) "Wholesale sale" has the same meaning as provided in RCW
4 82.04.060.

5 **Sec. 6.** RCW 82.08.820 and 2011 c 174 s 206 are each amended to
6 read as follows:

7 (1) Wholesalers or third-party warehouseurs who own or operate
8 warehouses or grain elevators and retailers who own or operate
9 distribution centers, and who have paid the tax levied by RCW 82.08.020
10 on:

11 (a) Material-handling and racking equipment, and labor and services
12 rendered in respect to installing, repairing, cleaning, altering, or
13 improving the equipment; or

14 (b) Construction of a warehouse or grain elevator, including
15 materials, and including service and labor costs,
16 are eligible for an exemption in the form of a remittance. The amount
17 of the remittance is computed under subsection (3) of this section and
18 is based on the state share of sales tax.

19 (2) For purposes of this section and RCW 82.12.820:

20 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

21 (b) "Construction" means the actual construction of a warehouse or
22 grain elevator that did not exist before the construction began.
23 "Construction" includes expansion if the expansion adds at least two
24 hundred thousand square feet of additional space to an existing
25 warehouse or additional storage capacity of at least one million
26 bushels to an existing grain elevator. "Construction" does not include
27 renovation, remodeling, or repair;

28 (c) "Department" means the department of revenue;

29 (d) "Distribution center" means a warehouse that is used
30 exclusively by a retailer solely for the storage and distribution of
31 finished goods to retail outlets of the retailer. "Distribution
32 center" does not include a warehouse at which retail sales occur;

33 (e) "Finished goods" means tangible personal property intended for
34 sale by a retailer or wholesaler. "Finished goods" does not include
35 agricultural products stored by wholesalers, third-party warehouses, or
36 retailers if the storage takes place on the land of the person who

1 produced the agricultural product. "Finished goods" does not include
2 logs, minerals, petroleum, gas, or other extracted products stored as
3 raw materials or in bulk;

4 (f) "Grain elevator" means a structure used for storage and
5 handling of grain in bulk;

6 (g) "Material-handling equipment and racking equipment" means
7 equipment in a warehouse or grain elevator that is primarily used to
8 handle, store, organize, convey, package, or repackage finished goods.
9 The term includes tangible personal property with a useful life of one
10 year or more that becomes an ingredient or component of the equipment,
11 including repair and replacement parts. The term does not include
12 equipment in offices, lunchrooms, restrooms, and other like space,
13 within a warehouse or grain elevator, or equipment used for
14 nonwarehousing purposes. "Material-handling equipment" includes but is
15 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
16 place units, cranes, hoists, mechanical arms, and robots; mechanized
17 systems, including containers that are an integral part of the system,
18 whose purpose is to lift or move tangible personal property; and
19 automated handling, storage, and retrieval systems, including computers
20 that control them, whose purpose is to lift or move tangible personal
21 property; and forklifts and other off-the-road vehicles that are used
22 to lift or move tangible personal property and that cannot be operated
23 legally on roads and streets. "Racking equipment" includes, but is not
24 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
25 pallets, and other containers and storage devices that form a necessary
26 part of the storage system;

27 (h) "Person" has the meaning given in RCW 82.04.030;

28 (i) "Retailer" means a person who makes "sales at retail" as
29 defined in chapter 82.04 RCW of tangible personal property;

30 (j) "Square footage" means the product of the two horizontal
31 dimensions of each floor of a specific warehouse. The entire footprint
32 of the warehouse shall be measured in calculating the square footage,
33 including space that juts out from the building profile such as loading
34 docks. "Square footage" does not mean the aggregate of the square
35 footage of more than one warehouse at a location or the aggregate of
36 the square footage of warehouses at more than one location;

37 (k) "Third-party warehouser" means a person taxable under RCW
38 82.04.280(1)(d);

1 (1) "Warehouse" means an enclosed building or structure in which
2 finished goods are stored. A warehouse building or structure may have
3 more than one storage room and more than one floor. Office space,
4 lunchrooms, restrooms, and other space within the warehouse and
5 necessary for the operation of the warehouse are considered part of the
6 warehouse as are loading docks and other such space attached to the
7 building and used for handling of finished goods. Landscaping and
8 parking lots are not considered part of the warehouse. A storage yard
9 is not a warehouse, nor is a building in which manufacturing takes
10 place; and

11 (m) "Wholesaler" means a person who makes "sales at wholesale" as
12 defined in chapter 82.04 RCW of tangible personal property, but
13 "wholesaler" does not include a person who makes sales exempt under RCW
14 82.04.330.

15 (3)(a) A person claiming an exemption from state tax in the form of
16 a remittance under this section must pay the tax imposed by RCW
17 82.08.020. The buyer may then apply to the department for remittance
18 of all or part of the tax paid under RCW 82.08.020. For grain
19 elevators with bushel capacity of one million but less than two
20 million, the remittance is equal to fifty percent of the amount of tax
21 paid. For warehouses with square footage of two hundred thousand or
22 more and for grain elevators with bushel capacity of two million or
23 more, the remittance is equal to one hundred percent of the amount of
24 tax paid for qualifying construction, materials, service, and labor,
25 and fifty percent of the amount of tax paid for qualifying material-
26 handling equipment and racking equipment, and labor and services
27 rendered in respect to installing, repairing, cleaning, altering, or
28 improving the equipment.

29 (b) The department shall determine eligibility under this section
30 based on information provided by the buyer and through audit and other
31 administrative records. The buyer shall on a quarterly basis submit an
32 information sheet, in a form and manner as required by the department
33 by rule, specifying the amount of exempted tax claimed and the
34 qualifying purchases or acquisitions for which the exemption is
35 claimed. The buyer shall retain, in adequate detail to enable the
36 department to determine whether the equipment or construction meets the
37 criteria under this section: Invoices; proof of tax paid; documents

1 describing the material-handling equipment and racking equipment;
2 location and size of warehouses and grain elevators; and construction
3 invoices and documents.

4 (c) The department shall on a quarterly basis remit exempted
5 amounts to qualifying persons who submitted applications during the
6 previous quarter.

7 (4) Warehouses, grain elevators, and material-handling equipment
8 and racking equipment for which an exemption, credit, or deferral has
9 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
10 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
11 under this section. Warehouses and grain elevators upon which
12 construction was initiated before May 20, 1997, are not eligible for a
13 remittance under this section.

14 (5) The lessor or owner of a warehouse or grain elevator is not
15 eligible for a remittance under this section unless:

16 (a) The lessor or owner complies with the requirements of section
17 1 of this act; and

18 (b) The underlying ownership of the warehouse or grain elevator and
19 the material-handling equipment and racking equipment vests exclusively
20 in the same person((~~7~~)); or ((~~unless~~))

21 (c) The lessor by written contract agrees to pass the economic
22 benefit of the remittance to the lessee in the form of reduced rent
23 payments.

24 **Sec. 7.** RCW 82.08.900 and 2006 c 151 s 4 are each amended to read
25 as follows:

26 (1) The tax levied by RCW 82.08.020 does not apply to sales to an
27 eligible person establishing or operating an anaerobic digester or to
28 services rendered in respect to installing, constructing, repairing,
29 cleaning, altering, or improving an anaerobic digester, or to sales of
30 tangible personal property that becomes an ingredient or component of
31 the anaerobic digester. The anaerobic digester must be used primarily
32 to treat livestock manure.

33 (2)(a) The department of revenue must provide an exemption
34 certificate to an eligible person upon application by that person. The
35 application must be in a form and manner prescribed by the department
36 and must contain information regarding the location of the facility and
37 other information as the department may require.

1 (b) A person claiming an exemption under this section must keep
2 records necessary for the department to verify eligibility under this
3 section. The exemption is available only when the buyer provides the
4 seller with an exemption certificate in a form and manner prescribed by
5 the department. The seller must retain a copy of the certificate for
6 the seller's files.

7 (3) The definitions in this subsection apply to this section and
8 RCW 82.12.900 unless the context clearly requires otherwise:

9 (a) "Anaerobic digester" means a facility that processes manure
10 from livestock into biogas and dried manure using microorganisms in a
11 decomposition process within a closed, oxygen-free container.

12 (b) "Eligible person" means any person establishing or operating an
13 anaerobic digester to treat primarily livestock manure who complies
14 with the requirements of section 1 of this act.

15 (c) "Primarily" means more than fifty percent measured by volume or
16 weight.

17 **Sec. 8.** RCW 82.08.955 and 2007 c 309 s 4 are each amended to read
18 as follows:

19 (1) The tax levied by RCW 82.08.020 does not apply to sales of
20 machinery and equipment, or to services rendered in respect to
21 constructing structures, installing, constructing, repairing, cleaning,
22 decorating, altering, or improving of structures or machinery and
23 equipment, or to sales of tangible personal property that becomes an
24 ingredient or component of structures or machinery and equipment, if
25 the machinery, equipment, or structure is used directly for the retail
26 sale of a biodiesel blend or E85 motor fuel. Structures and machinery
27 and equipment that are used for the retail sale of a biodiesel blend or
28 E85 motor fuel and for other purposes are exempt only on the portion
29 used directly for the retail sale of a biodiesel blend or E85 motor
30 fuel.

31 (2) The tax levied by RCW 82.08.020 does not apply to sales of fuel
32 delivery vehicles or to sales of or charges made for labor and services
33 rendered in respect to installing, repairing, cleaning, altering, or
34 improving the vehicles including repair parts and replacement parts if
35 at least seventy-five percent of the fuel distributed by the vehicles
36 is a biodiesel blend or E85 motor fuel.

1 (3) A person taking the exemption under this section must keep
2 records necessary for the department to verify eligibility under this
3 section and comply with the requirements of section 1 of this act. The
4 exemption is available only when the buyer provides the seller with an
5 exemption certificate in a form and manner prescribed by the
6 department. The seller shall retain a copy of the certificate for the
7 seller's files.

8 (4) For the purposes of this section, the definitions in RCW
9 82.04.4334 and this subsection apply.

10 (a) "Biodiesel blend" means fuel that contains at least twenty
11 percent biodiesel fuel by volume.

12 (b) "E85 motor fuel" means an alternative fuel that is a blend of
13 ethanol and hydrocarbon of which the ethanol portion is nominally
14 seventy-five to eighty-five percent denatured fuel ethanol by volume
15 that complies with the most recent version of American society of
16 testing and materials specification D 5798.

17 (c) "Machinery and equipment" means industrial fixtures, devices,
18 and support facilities and tangible personal property that becomes an
19 ingredient or component thereof, including repair parts and replacement
20 parts that are integral and necessary for the delivery of biodiesel
21 blends or E85 motor fuel into the fuel tank of a motor vehicle.

22 (5) This section expires July 1, 2015.

23 **Sec. 9.** RCW 82.12.955 and 2007 c 309 s 5 are each amended to read
24 as follows:

25 (1) The provisions of this chapter do not apply in respect to the
26 use of machinery and equipment, or to services rendered in respect to
27 installing, repairing, cleaning, altering, or improving of eligible
28 machinery and equipment, or tangible personal property that becomes an
29 ingredient or component of machinery and equipment used directly for
30 the retail sale of a biodiesel or E85 motor fuel.

31 (2) The provisions of this chapter do not apply in respect to the
32 use of fuel delivery vehicles including repair parts and replacement
33 parts and to services rendered in respect to installing, repairing,
34 cleaning, altering, or improving the vehicles if at least seventy-five
35 percent of the fuel distributed by the vehicles is a biodiesel or E85
36 motor fuel.

1 (3) A person taking the exemption under this section must comply
2 with the requirements of section 1 of this act.

3 (4) For the purposes of this section, the definitions in RCW
4 82.04.4334 and 82.08.955 apply.

5 (~~(4)~~) (5) This section expires July 1, 2015.

6 NEW SECTION. **Sec. 10.** If any part of this act is found to be in
7 conflict with federal requirements that are a prescribed condition to
8 the allocation of federal funds to any entities in the state, the
9 conflicting part of this act is inoperative solely to the extent of the
10 conflict and with respect to the entities directly affected, and this
11 finding does not affect the operation of the remainder of this act in
12 its application to the entities concerned. Rules adopted under this
13 act must meet federal requirements that are a necessary condition to
14 the receipt of federal funds by any entities in the state.

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