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SENATE BILL 5394

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State of Washington

63rd Legislature

2013 Regular Session

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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