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**HOUSE BILL 1038**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Moeller, Appleton, Stanford, Hudgins, Santos, and Ormsby

AN ACT Relating to extending apprenticeship utilization requirements; amending RCW 39.04.310, 39.04.320, 82.60.025, 82.75.010, 82.82.010, 82.08.820, 82.08.900, 82.08.955, and 82.12.955; reenacting and amending RCW 82.63.010; and adding a new section to chapter 49.04 RCW.

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

**Sec.**  RCW 39.04.310 and 2007 c 437 s 1 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 39.04.300 and 39.04.320 unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(3) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(4) "School district" has the same meaning as in RCW 28A.315.025.

(5) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council.

(6)(a) "Subsidized public work" means all work, construction, alterations, repairs, or improvements other than ordinary maintenance where:

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

(ii) One or more parties to the contract for the project received or will receive a loan for the project from the state or any county, municipality, or political subdivision.

(b) "Subsidized public work" does not include:

(i) Work financed by a loan provided by a housing authority created under chapter 35.82 RCW; or

(ii) Affordable housing projects that receive financing from the Washington state housing finance commission and are not subject to federal prevailing wage requirements.

**Sec.**  RCW 39.04.320 and 2009 c 197 s 1 are each amended to read as follows:

(1)(a) Except as provided in (b) through (d) of this subsection, from January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(b)(i) This section does not apply to contracts advertised for bid before July 1, 2007, for any public works by the department of transportation.

(ii) For contracts advertised for bid on or after July 1, 2007, and before July 1, 2008, for all public works by the department of transportation estimated to cost five million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after July 1, 2008, and before July 1, 2009, for all public works by the department of transportation estimated to cost three million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after July 1, 2009, for all public works by the department of transportation estimated to cost two million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(c)(i) This section does not apply to contracts advertised for bid before January 1, 2008, for any public works by a school district, or to any project funded in whole or in part by bond issues approved before July 1, 2007.

(ii) For contracts advertised for bid on or after January 1, 2008, for all public works by a school district estimated to cost three million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2009, for all public works by a school district estimated to cost two million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after January 1, 2010, for all public works by a school district estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(d)(i) For contracts advertised for bid on or after January 1, 2010, for all public works by a four-year institution of higher education estimated to cost three million dollars or more, all specifications must require that no less than ten percent of the labor hours be performed by apprentices.

(ii) For contracts advertised for bid on or after January 1, 2011, for all public works by a four-year institution of higher education estimated to cost two million dollars or more, all specifications must require that no less than twelve percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2012, for all public works by a four-year institution of higher education estimated to cost one million dollars or more, all specifications must require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) For all subsidized public works projects estimated to cost five million dollars or more, all specifications must require that no less than fifteen percent of the labor hours be performed by apprentices.

(3) Awarding entities may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310 and this section; or

(d) Other criteria the awarding entity deems appropriate, which are subject to review by the office of the governor.

((~~(3)~~))(4) The secretary of the department of transportation shall adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas; or

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation.

((~~(4)~~))(5) This section applies to public works contracts awarded by the state, to public works contracts awarded by school districts, and to public works contracts awarded by state four-year institutions of higher education. However, this section does not apply to contracts awarded by state agencies headed by a separately elected public official.

((~~(5)~~))(6)(a) The department of ((~~general administration~~))enterprise services must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection ((~~(2)~~))(3) of this section.

(b) The department of labor and industries shall assist the department of ((~~general administration~~))enterprise services in providing information and technical assistance.

((~~(6)~~))(7) The secretary of transportation shall establish an apprenticeship utilization advisory committee, which shall include statewide geographic representation and consist of equal numbers of representatives of contractors and labor. The committee must include at least one member representing contractor businesses with less than thirty-five employees. The advisory committee shall meet regularly with the secretary of transportation to discuss implementation of this section by the department of transportation, including development of the process to be used to adjust the requirements of this section for a specific project. The committee shall provide a report to the legislature by January 1, 2008, on the effects of the apprentice labor requirement on transportation projects and on the availability of apprentice labor and programs statewide.

((~~(7)~~))(8) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of ((~~general administration~~))enterprise services and the department of labor and industries shall compile and summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft.

NEW SECTION. **Sec.**  A new section is added to chapter 49.04 RCW to read as follows:

Upon request from a party to a contract for subsidized public work, as defined in RCW 39.04.310(6)(a)(i), the apprenticeship council must provide written certification of the party's compliance with RCW 39.04.320.

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

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

(1) The lessor or owner complies with the requirements of RCW 39.04.320; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The lessor or owner complies with the requirements of RCW 39.04.320; and

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

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

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

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

(8) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5)(a) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

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

(i) The lessor or owner complies with the requirements of RCW 39.04.320; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The lessor or owner complies with the requirements of RCW 39.04.320; and

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

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

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

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

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

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

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

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

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

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

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

(13) "Warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation.

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

**Sec.**  RCW 82.08.820 and 2014 c 140 s 23 are each amended to read as follows:

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

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

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs,

are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

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

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

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

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

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

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Marijuana, useable marijuana, or marijuana-infused products;

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

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

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

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

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

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

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

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

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

(b) The department must determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer must on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

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

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

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

(a) The lessor or owner complies with the requirements of RCW 39.04.320; and

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

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

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

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

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

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

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

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

(b) "Eligible person" means any person establishing or operating an anaerobic digester to treat primarily livestock manure who complies with the requirements of RCW 39.04.320.

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

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

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

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

(3) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section and comply with the requirements of RCW 39.04.320. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

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

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

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

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

(5) This section expires July 1, 2015.

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

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

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

(3) A person taking the exemption under this section must comply with the requirements of RCW 39.04.320.

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

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

**--- END ---**