
SENATE BILL 5395

State of Washington

63rd Legislature

2013 Regular Session

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

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

1 AN ACT Relating to extending the application of prevailing wage
2 requirements; amending RCW 39.12.010, 39.12.030, 39.12.040, 39.12.042,
3 39.12.050, 39.12.065, 39.12.070, 82.60.025, 82.75.010, 82.82.010,
4 82.08.820, 82.08.900, 82.08.955, and 82.12.955; reenacting and amending
5 RCW 82.63.010; and adding a new section to chapter 39.12 RCW.

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

7 **Sec. 1.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to read
8 as follows:

9 (1) The "prevailing rate of wage," for the intents and purposes of
10 this chapter, shall be the rate of hourly wage, usual benefits, and
11 overtime paid in the locality, as hereinafter defined, to the majority
12 of workers, laborers, or mechanics, in the same trade or occupation.
13 In the event that there is not a majority in the same trade or
14 occupation paid at the same rate, then the average rate of hourly wage
15 and overtime paid to such laborers, workers, or mechanics in the same
16 trade or occupation shall be the prevailing rate. If the wage paid by
17 any contractor or subcontractor to laborers, workers, or mechanics on
18 any public work is based on some period of time other than an hour, the

1 hourly wage for the purposes of this chapter shall be mathematically
2 determined by the number of hours worked in such period of time.

3 (2) The "locality" for the purposes of this chapter shall be the
4 largest city in the county wherein the physical work is being
5 performed.

6 (3) The "usual benefits" for the purposes of this chapter shall
7 include the amount of:

8 (a) The rate of contribution irrevocably made by a contractor or
9 subcontractor to a trustee or to a third person pursuant to a fund,
10 plan, or program; and

11 (b) The rate of costs to the contractor or subcontractor which may
12 be reasonably anticipated in providing benefits to workers, laborers,
13 and mechanics pursuant to an enforceable commitment to carry out a
14 financially responsible plan or program which was communicated in
15 writing to the workers, laborers, and mechanics affected, for medical
16 or hospital care, pensions on retirement or death, compensation for
17 injuries or illness resulting from occupational activity, or insurance
18 to provide any of the foregoing, for unemployment benefits, life
19 insurance, disability and sickness insurance, or accident insurance,
20 for vacation and holiday pay, for defraying costs of apprenticeship or
21 other similar programs, or for other bona fide fringe benefits, but
22 only where the contractor or subcontractor is not required by other
23 federal, state, or local law to provide any of such benefits.

24 (4) An "interested party" for the purposes of this chapter shall
25 include a contractor, subcontractor, an employee of a contractor or
26 subcontractor, an organization whose members' wages, benefits, and
27 conditions of employment are affected by this chapter, and the director
28 of labor and industries or the director's designee.

29 (5) "Public work" has the same meaning as in RCW 39.04.010, except
30 for purposes of this chapter, "public work" also includes all publicly
31 subsidized work, construction, alterations, repairs, or improvements
32 other than ordinary maintenance. Work is subsidized by the public if:

33 (a) One or more parties to the contract received or will receive a
34 qualifying tax preference;

35 (b) One or more parties to the contract received or will receive a
36 loan from the state or any county, municipality, or political
37 subdivision;

1 (c) The work occurs on land that a party to the contract leases
2 from the state or any county, municipality, or political subdivision;
3 or

4 (d) The work occurs on land that a party to the contract purchased
5 from the state or any county, municipality, or political subdivision
6 for less than fair market value as determined by the state, county,
7 municipality, or political subdivision at the time of the sale.

8 (6) "Qualifying tax preference" means a tax preference under
9 chapter 82.60, 82.63, 82.75, or 82.82 RCW, or RCW 82.08.820, 82.08.900,
10 82.08.955, 82.12.900, or 82.12.955.

11 (7) "Subsidy recipient" means the private party to a contract for
12 subsidized public work who received a tax preference, received a public
13 loan, leases public land, or purchased public land as described in
14 subsection (5) of this section.

15 **Sec. 2.** RCW 39.12.030 and 2009 c 62 s 1 are each amended to read
16 as follows:

17 (1) The specifications for every contract for the construction,
18 reconstruction, maintenance, or repair of any public work (~~(to which~~
19 ~~the state or any county, municipality, or political subdivision created~~
20 ~~by its laws is a party,)) shall contain a provision stating the hourly
21 minimum rate of wage, not less than the prevailing rate of wage, which
22 may be paid to laborers, workers, or mechanics in each trade or
23 occupation required for such public work employed in the performance of
24 the contract either by the contractor, subcontractor, or other person
25 doing or contracting to do the whole or any part of the work
26 contemplated by the contract, and the contract shall contain a
27 stipulation that such laborers, workers, or mechanics shall be paid not
28 less than such specified hourly minimum rate of wage. If the awarding
29 agency or subsidy recipient determines that the work contracted for
30 meets the definition of residential construction, the contract must
31 include that information.~~

32 (2) If the hourly minimum rate of wage stated in the contract
33 specifies residential construction rates and it is later determined
34 that the work performed is commercial and subject to commercial
35 construction rates, the state, county, municipality, ~~((or))~~ political
36 subdivision, or subsidy recipient that entered into the contract must
37 pay the difference between the residential rate stated and the actual

1 commercial rate to the contractor, subcontractor, or other person doing
2 or contracting to do the whole or any part of the work under the
3 contract.

4 **Sec. 3.** RCW 39.12.040 and 2012 c 129 s 1 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (2) of this section, before
7 payment is made by or on behalf of the state, or any county,
8 municipality, or political subdivision created by its laws, or any
9 subsidy recipient of any sum or sums due on account of a public works
10 contract, it shall be the duty of the officer or person charged with
11 the custody and disbursement of ((public)) funds to require the
12 contractor and each and every subcontractor from the contractor or a
13 subcontractor to submit to such officer a "Statement of Intent to Pay
14 Prevailing Wages." For a contract in excess of ten thousand dollars,
15 the statement of intent to pay prevailing wages shall include:

- 16 (a) The contractor's registration certificate number; and
17 (b) The prevailing rate of wage for each classification of workers
18 entitled to prevailing wages under RCW 39.12.020 and the estimated
19 number of workers in each classification.

20 Each statement of intent to pay prevailing wages must be approved
21 by the industrial statistician of the department of labor and
22 industries before it is submitted to the disbursing officer or person.
23 Unless otherwise authorized by the department of labor and industries,
24 each voucher claim submitted by a contractor for payment on a project
25 estimate shall state that the prevailing wages have been paid in
26 accordance with the prefiled statement or statements of intent to pay
27 prevailing wages on file with the public agency or subsidy recipient.
28 Following the final acceptance of a public works project, it shall be
29 the duty of the officer charged with the disbursement of public
30 funds((7)) to require the contractor and each and every subcontractor
31 from the contractor or a subcontractor to submit to such officer an
32 "Affidavit of Wages Paid" before the funds retained according to the
33 provisions of RCW 60.28.011 are released to the contractor. For
34 subsidized public works, following the contract completion date of the
35 project, it shall be the duty of the officer or person charged with the
36 disbursement of funds to require the contractor and each and every
37 subcontractor from the contractor or a subcontractor to submit to such

1 officer or person an "Affidavit of Wages Paid" before final payment is
2 made to the contractor. If a subcontractor performing work on a public
3 works project fails to submit an "affidavit of wages paid" form, the
4 contractor or subcontractor with whom the subcontractor had a
5 contractual relationship for the project may file the forms on behalf
6 of the nonresponsive subcontractor. Affidavit forms may only be filed
7 on behalf of a nonresponsive subcontractor who has ceased operations or
8 failed to file as required by this section. Filings made on behalf of
9 a subcontractor may not be accepted sooner than thirty-one days after
10 the acceptance date of the public works project (~~and~~) or contract
11 completion date of a subsidized public works project. The contractor
12 filing the affidavit must accept responsibility for payment of
13 prevailing wages unpaid by the subcontractor on the project pursuant to
14 RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on
15 behalf of a subcontractor subjects the filer to the same penalties as
16 are provided in RCW 39.12.050. Each affidavit of wages paid must be
17 certified by the industrial statistician of the department of labor and
18 industries before it is submitted to the disbursing officer or person.

19 (2) As an alternate to the procedures provided for in subsection
20 (1) of this section, for public works projects of two thousand five
21 hundred dollars or less and for projects where the limited public works
22 process under RCW 39.04.155(3) is followed:

23 (a) An awarding agency or subsidy recipient may authorize the
24 contractor or subcontractor to submit the statement of intent to pay
25 prevailing wages directly to the officer or person charged with the
26 custody or disbursement of (~~public~~) funds in the awarding agency or
27 subsidy recipient without approval by the industrial statistician of
28 the department of labor and industries. The awarding agency or subsidy
29 recipient shall retain such statement of intent to pay prevailing wages
30 for a period of not less than three years.

31 (b) Upon final acceptance of the public works project, or upon the
32 contract completion date of a subsidized public works project, the
33 awarding agency or subsidy recipient shall require the contractor or
34 subcontractor to submit an affidavit of wages paid. Upon receipt of
35 the affidavit of wages paid, the awarding agency or subsidy recipient
36 may pay the contractor or subcontractor in full, including funds that
37 would otherwise be retained according to the provisions of RCW
38 60.28.011. Within thirty days of receipt of the affidavit of wages

1 paid, the awarding agency or subsidy recipient shall submit the
2 affidavit of wages paid to the industrial statistician of the
3 department of labor and industries for approval.

4 (c) A statement of intent to pay prevailing wages and an affidavit
5 of wages paid shall be on forms approved by the department of labor and
6 industries.

7 (d) In the event of a wage claim and a finding for the claimant by
8 the department of labor and industries where the awarding agency or
9 subsidy recipient has used the alternative process provided for in
10 subsection (2) of this section, the awarding agency or subsidy
11 recipient shall pay the wages due directly to the claimant. If the
12 contractor or subcontractor did not pay the wages stated in the
13 affidavit of wages paid, the awarding agency or subsidy recipient may
14 take action at law to seek reimbursement from the contractor or
15 subcontractor of wages paid to the claimant, and may prohibit the
16 contractor or subcontractor from bidding on any public works contract
17 of the awarding agency or subsidy recipient for up to one year.

18 (e) Nothing in this section shall be interpreted to allow an
19 awarding agency or subsidy recipient to subdivide any public works
20 project of more than two thousand five hundred dollars for the purpose
21 of circumventing the procedures required by subsection (1) of this
22 section.

23 **Sec. 4.** RCW 39.12.042 and 1993 c 404 s 3 are each amended to read
24 as follows:

25 If any agency of the state, or any county, municipality, or
26 political subdivision created by its laws, or any subsidy recipient
27 shall knowingly fail to comply with the provisions of RCW 39.12.040 as
28 now or hereafter amended, (~~such agency of the state, or county,~~
29 ~~municipality, or political subdivision created by its laws,~~) it shall
30 be liable to all workers, laborers, or mechanics to the full extent and
31 for the full amount of wages due, pursuant to the prevailing wage
32 requirements of RCW 39.12.020.

33 **Sec. 5.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to read
34 as follows:

35 (1) Any contractor or subcontractor who files a false statement or
36 fails to file any statement or record required to be filed under this

1 chapter and the rules adopted under this chapter((7)) shall, after a
2 determination to that effect has been issued by the director after
3 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of
4 five hundred dollars for each false filing or failure to file, and
5 shall not be permitted to bid, or have a bid considered, on any public
6 works contract until the penalty has been paid in full to the director.
7 The civil penalty under this subsection shall not apply to a violation
8 determined by the director to be an inadvertent filing or reporting
9 error. Civil penalties shall be deposited in the public works
10 administration account.

11 To the extent that a contractor or subcontractor has not paid wages
12 at the rate due pursuant to RCW 39.12.020, and a finding to that effect
13 has been made as provided by this subsection, such unpaid wages shall
14 constitute a lien against the bonds and retainage as provided in RCW
15 18.27.040, 19.28.041, 39.08.010, section 8 of this act, and 60.28.011.

16 (2) If a contractor or subcontractor is found to have violated the
17 provisions of subsection (1) of this section for a second time within
18 a five-year period, the contractor or subcontractor shall be subject to
19 the sanctions prescribed in subsection (1) of this section and shall
20 not be allowed to bid on any public works contract for one year. The
21 one-year period shall run from the date of notice by the director of
22 the determination of noncompliance. When an appeal is taken from the
23 director's determination, the one-year period shall commence from the
24 date of the final determination of the appeal.

25 The director shall issue his or her findings that a contractor or
26 subcontractor has violated the provisions of this subsection after a
27 hearing held subject to the provisions of chapter 34.05 RCW.

28 **Sec. 6.** RCW 39.12.065 and 2009 c 219 s 4 are each amended to read
29 as follows:

30 (1) Upon complaint by an interested party, the director of labor
31 and industries shall cause an investigation to be made to determine
32 whether there has been compliance with this chapter and the rules
33 adopted hereunder, and, if the investigation indicates that a violation
34 may have occurred, a hearing shall be held in accordance with chapter
35 34.05 RCW. The director shall issue a written determination including
36 his or her findings after the hearing. A judicial appeal from the

1 director's determination may be taken in accordance with chapter 34.05
2 RCW, with the prevailing party entitled to recover reasonable costs and
3 attorneys' fees.

4 A complaint concerning nonpayment of the prevailing rate of wage
5 shall be filed with the department of labor and industries no later
6 than thirty days from the acceptance date of the public works project.
7 The failure to timely file such a complaint shall not prohibit a
8 claimant from pursuing a private right of action against a contractor
9 or subcontractor for unpaid prevailing wages. The remedy provided by
10 this section is not exclusive and is concurrent with any other remedy
11 provided by law.

12 (2) To the extent that a contractor or subcontractor has not paid
13 the prevailing rate of wage under a determination issued as provided in
14 subsection (1) of this section, the director shall notify the agency or
15 subsidy recipient awarding the public works contract of the amount of
16 the violation found, and the awarding agency shall withhold, or in the
17 case of a bond, the director shall proceed against the bond in
18 accordance with the applicable statute to recover, such amount from the
19 following sources in the following order of priority until the total of
20 such amount is withheld:

21 (a) The retainage or bond in lieu of retainage as provided in RCW
22 60.28.011;

23 (b) If the claimant was employed by the contractor or subcontractor
24 on the public works project, the bond filed by the contractor or
25 subcontractor with the department of labor and industries as provided
26 in RCW 18.27.040 and 19.28.041;

27 (c) A surety bond, or at the contractor's or subcontractor's option
28 an escrow account, running to the director in the amount of the
29 violation found; and

30 (d) That portion of the progress payments which is properly
31 allocable to the contractor or subcontractor who is found to be in
32 violation of this chapter. Under no circumstances shall any portion of
33 the progress payments be withheld that are properly allocable to a
34 contractor, subcontractor, or supplier, that is not found to be in
35 violation of this chapter.

36 The amount withheld shall be released to the director to distribute
37 in accordance with the director's determination.

1 (3)(a) A contractor or subcontractor that is found, in accordance
2 with subsection (1) of this section, to have violated the requirement
3 to pay the prevailing rate of wage shall be subject to a civil penalty
4 of not less than one thousand dollars or an amount equal to twenty
5 percent of the total prevailing wage violation found on the contract,
6 whichever is greater, and shall not be permitted to bid, or have a bid
7 considered, on any public works contract until such civil penalty has
8 been paid in full to the director. If the contractor or subcontractor
9 performs work on a subsidized public works project, the subsidy
10 recipient shall also be subject to a civil penalty in the amount of the
11 unpaid wages or the value of the qualifying tax preference, whichever
12 is greater. Civil penalties shall be deposited in the public works
13 administration account.

14 (b) If a contractor or subcontractor is found to have participated
15 in a violation of the requirement to pay the prevailing rate of wage
16 for a second time within a five-year period, the contractor or
17 subcontractor shall be subject to the sanctions prescribed in (a) of
18 this subsection and as an additional sanction shall not be allowed to
19 bid on any public works contract for two years. (~~Civil penalties~~
20 ~~shall be deposited in the public works administration account.~~) If a
21 previous or subsequent violation of a requirement to pay a prevailing
22 rate of wage under federal or other state law is found against the
23 contractor or subcontractor within five years from a violation under
24 this section, the contractor or subcontractor shall not be allowed to
25 bid on any public works contract for two years. A contractor or
26 subcontractor shall not be barred from bidding on any public works
27 contract if the contractor or subcontractor relied upon written
28 information from the department to pay a prevailing rate of wage that
29 is later determined to be in violation of this chapter.

30 (c) The civil penalty and sanctions under this subsection (3) shall
31 not apply to a violation determined by the director to be an
32 inadvertent filing or reporting error.

33 (d) To the extent that a contractor or subcontractor has not paid
34 the prevailing wage rate under a determination issued as provided in
35 subsection (1) of this section, the unpaid wages shall constitute a
36 lien against the bonds and retainage as provided herein and in RCW
37 18.27.040, 19.28.041, 39.08.010, section 8 of this act, and 60.28.011.

1 **Sec. 7.** RCW 39.12.070 and 2008 c 285 s 2 are each amended to read
2 as follows:

3 The department of labor and industries may charge fees to awarding
4 agencies or subsidy recipients on public works for the approval of
5 statements of intent to pay prevailing wages and the certification of
6 affidavits of wages paid. The department may also charge fees to
7 persons or organizations requesting the arbitration of disputes under
8 RCW 39.12.060. The amount of the fees shall be established by rules
9 adopted by the department under the procedures in the administrative
10 procedure act, chapter 34.05 RCW. The fees shall apply to all
11 approvals, certifications, and arbitration requests made after the
12 effective date of the rules. All fees shall be deposited in the public
13 works administration account. The department may refuse to arbitrate
14 for contractors, subcontractors, persons, or organizations which have
15 not paid the proper fees. The department may, if necessary, request
16 the attorney general to take legal action to collect delinquent fees.

17 The department shall set the fees permitted by this section at a
18 level that generates revenue that is as near as practicable to the
19 amount of the appropriation to administer this chapter((7)) including,
20 but not limited to, the performance of adequate wage surveys, and to
21 investigate and enforce all alleged violations of this chapter((7))
22 including, but not limited to, incorrect statements of intent to pay
23 prevailing wage, incorrect certificates of affidavits of wages paid,
24 and wage claims, as provided for in this chapter and chapters 49.48 and
25 49.52 RCW. However, the fees charged for the approval of statements of
26 intent to pay prevailing wages and the certification of affidavits of
27 wages paid shall be forty dollars.

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

30 (1) Every contractor and subcontractor on a subsidized public works
31 project, as defined in RCW 39.12.010(5) (a), (b), (c), or (d), must
32 file with the department of labor and industries a surety bond issued
33 by a surety insurer who meets the requirements of chapter 48.28 RCW in
34 the sum of five percent of the amount due on the public works contract.
35 The bond must name the state of Washington as obligee with good and
36 sufficient surety in a form to be approved by the department. The bond
37 must be continuous and may be canceled by the surety upon the surety

1 giving written notice to the director of labor and industries. The
2 bond must be conditioned to recover against the contractor and its
3 officers, agents, and employees by reason of its violation of this
4 chapter. A change in the name of a business or a change in the type of
5 business entity does not impair a bond for the purposes of this section
6 so long as one of the original applicants for the bond maintains
7 partial ownership in the business covered by the bond.

8 (2) In lieu of posting a bond, the contractor and subcontractor on
9 a subsidized public works project, as defined in RCW 39.12.010(5) (a),
10 (b), (c), and (d), may deposit five percent of the amount due on the
11 public works contract in an interest-bearing account.

12 **Sec. 9.** RCW 82.60.025 and 2010 1st sp.s. c 16 s 4 are each amended
13 to read as follows:

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

16 (1) The lessor or owner complies with the requirements of chapter
17 39.12 RCW; and

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

20 ((+2)) (3)(a) The lessor by written contract agrees to pass the
21 economic benefit of the deferral to the lessee;

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

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

30 **Sec. 10.** RCW 82.63.010 and 2009 c 268 s 2 are each reenacted and
31 amended to read as follows:

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

34 (1) "Advanced computing" means technologies used in the designing
35 and developing of computing hardware and software, including

1 innovations in designing the full spectrum of hardware from hand-held
2 calculators to super computers, and peripheral equipment.

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

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

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

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

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

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

29 (a) The lessor or owner complies with the requirements of chapter
30 39.12 RCW; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (13) "Pilot scale manufacturing" means design, construction, and
38 testing of preproduction prototypes and models in the fields of

1 biotechnology, advanced computing, electronic device technology,
2 advanced materials, and environmental technology other than for
3 commercial sale. As used in this subsection, "commercial sale"
4 excludes sales of prototypes or sales for market testing if the total
5 gross receipts from such sales of the product, service, or process do
6 not exceed one million dollars.

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

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

1 either brings the machinery and equipment into Washington or makes a
2 retail purchase of the machinery and equipment in Washington or
3 elsewhere.

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

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

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

24 **Sec. 11.** RCW 82.75.010 and 2010 c 114 s 145 are each amended to
25 read as follows:

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

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

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

36 (3) "Biotechnology product" means any virus, therapeutic serum,
37 antibody, protein, toxin, antitoxin, vaccine, blood, blood component or

1 derivative, allergenic product, or analogous product produced through
2 the application of biotechnology that is used in the prevention,
3 treatment, or cure of diseases or injuries to humans.

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

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

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

11 (i) The lessor or owner complies with the requirements of chapter
12 39.12 RCW; and

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

15 ~~((+ii+))~~ (iii)(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 82.75.070; 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 (6)(a) "Initiation of construction" means the date that a building
26 permit is issued under the building code adopted under RCW 19.27.031
27 for:

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

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

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

37 (b) "Initiation of construction" does not include soil testing,

1 site clearing and grading, site preparation, or any other related
2 activities that are initiated before the issuance of a building permit
3 for the construction of the foundation of the building.

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

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

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

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

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

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

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

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

37 (11) "Qualified machinery and equipment" means all new industrial
38 and research fixtures, equipment, and support facilities that are an

1 integral and necessary part of a biotechnology product manufacturing or
2 medical device manufacturing operation. "Qualified machinery and
3 equipment" includes: Computers; software; data processing equipment;
4 laboratory equipment; manufacturing components such as belts, pulleys,
5 shafts, and moving parts; molds, tools, and dies; operating structures;
6 and all equipment used to control or operate the machinery.

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

9 **Sec. 12.** RCW 82.82.010 and 2008 c 15 s 1 are each amended to read
10 as follows:

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

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

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

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

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

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

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

3 (i) The lessor or owner complies with the requirements of chapter
4 39.12 RCW; and

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

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

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

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

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

23 (7) "Manufacture" has the same meaning as provided in RCW
24 82.04.120.

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

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

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

35 (11) "Qualified employment position" means a permanent full-time
36 employee employed in the eligible investment project during the entire
37 tax year. The term "entire tax year" means a full-time position that

1 is filled for a period of twelve consecutive months. The term "full-
2 time" means at least thirty-five hours a week, four hundred fifty-five
3 hours a quarter, or one thousand eight hundred twenty hours a year.

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

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

9 (14) "Wholesale sale" has the same meaning as provided in RCW
10 82.04.060.

11 **Sec. 13.** RCW 82.08.820 and 2011 c 174 s 206 are each amended to
12 read as follows:

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

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

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

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

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

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

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

35 (d) "Distribution center" means a warehouse that is used
36 exclusively by a retailer solely for the storage and distribution of

1 finished goods to retail outlets of the retailer. "Distribution
2 center" does not include a warehouse at which retail sales occur;

3 (e) "Finished goods" means tangible personal property intended for
4 sale by a retailer or wholesaler. "Finished goods" does not include
5 agricultural products stored by wholesalers, third-party warehouses, or
6 retailers if the storage takes place on the land of the person who
7 produced the agricultural product. "Finished goods" does not include
8 logs, minerals, petroleum, gas, or other extracted products stored as
9 raw materials or in bulk;

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

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

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

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

36 (j) "Square footage" means the product of the two horizontal
37 dimensions of each floor of a specific warehouse. The entire footprint
38 of the warehouse shall be measured in calculating the square footage,

1 including space that juts out from the building profile such as loading
2 docks. "Square footage" does not mean the aggregate of the square
3 footage of more than one warehouse at a location or the aggregate of
4 the square footage of warehouses at more than one location;

5 (k) "Third-party warehouser" means a person taxable under RCW
6 82.04.280(1)(d);

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

17 (m) "Wholesaler" means a person who makes "sales at wholesale" as
18 defined in chapter 82.04 RCW of tangible personal property, but
19 "wholesaler" does not include a person who makes sales exempt under RCW
20 82.04.330.

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

35 (b) The department shall determine eligibility under this section
36 based on information provided by the buyer and through audit and other
37 administrative records. The buyer shall on a quarterly basis submit an
38 information sheet, in a form and manner as required by the department

1 by rule, specifying the amount of exempted tax claimed and the
2 qualifying purchases or acquisitions for which the exemption is
3 claimed. The buyer shall retain, in adequate detail to enable the
4 department to determine whether the equipment or construction meets the
5 criteria under this section: Invoices; proof of tax paid; documents
6 describing the material-handling equipment and racking equipment;
7 location and size of warehouses and grain elevators; and construction
8 invoices and documents.

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

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

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

21 (a) The lessor or owner complies with the requirements of chapter
22 39.12 RCW; and

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

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

29 **Sec. 14.** RCW 82.08.900 and 2006 c 151 s 4 are each amended to read
30 as follows:

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

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

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

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

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

17 (b) "Eligible person" means any person establishing or operating an
18 anaerobic digester to treat primarily livestock manure who complies
19 with the requirements of chapter 39.12 RCW.

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

22 **Sec. 15.** RCW 82.08.955 and 2007 c 309 s 4 are each amended to read
23 as follows:

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

36 (2) The tax levied by RCW 82.08.020 does not apply to sales of fuel
37 delivery vehicles or to sales of or charges made for labor and services

1 rendered in respect to installing, repairing, cleaning, altering, or
2 improving the vehicles including repair parts and replacement parts if
3 at least seventy-five percent of the fuel distributed by the vehicles
4 is a biodiesel blend or E85 motor fuel.

5 (3) A person taking the exemption under this section must keep
6 records necessary for the department to verify eligibility under this
7 section and comply with the requirements of chapter 39.12 RCW. The
8 exemption is available only when the buyer provides the seller with an
9 exemption certificate in a form and manner prescribed by the
10 department. The seller shall retain a copy of the certificate for the
11 seller's files.

12 (4) For the purposes of this section, the definitions in RCW
13 82.04.4334 and this subsection apply.

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

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

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

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

27 **Sec. 16.** RCW 82.12.955 and 2007 c 309 s 5 are each amended to read
28 as follows:

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

35 (2) The provisions of this chapter do not apply in respect to the
36 use of fuel delivery vehicles including repair parts and replacement
37 parts and to services rendered in respect to installing, repairing,

1 cleaning, altering, or improving the vehicles if at least seventy-five
2 percent of the fuel distributed by the vehicles is a biodiesel or E85
3 motor fuel.

4 (3) A person taking the exemption under this section must comply
5 with the requirements of chapter 39.12 RCW.

6 (4) For the purposes of this section, the definitions in RCW
7 82.04.4334 and 82.08.955 apply.

8 (~~(4)~~) (5) This section expires July 1, 2015.

--- END ---