

Food Processors' Exemption – HB 3125-A9

This bill seeks to expand the current food processors exemption to include grains, bakery products, dairy products and eggs and to refine criteria on how some industries may qualify.

The Department is neutral on this bill but I would like to bring to your attention some language that is new, somewhat confusing or could present administrative issues. All references are to the language in the A Engrossed bill as modified by the -9 Amendment

- Page 1, Line 14 to 15 of A Engrossed - The language here is very confusing because it says that a qualified processing activity “occurs prior to the first point of sale by the processor”, but the -9 includes industries like bakeries and dairies. Bakeries typically purchase processed grains from other potentially qualifying processors. Dairy producers may purchase pasteurized and processed cream products from another producer. In application of the existing exemption the department, following the law, has rejected allowing the exemption where a processor purchases previously processed food for further processing. Were the first point of sale language to be interpreted to mean the sale by any given processor it would render the language meaningless, any processor only processes until the point that they sell the product.
- Page 2, Line 1 to 4 of A Engrossed - Similar to the above concern, the exemption now appears to allow equipment to qualify even if the equipment is not used in “primary processing”. Baking is considered a form of secondary processing, as is converting pasteurized milk to cheese or yogurt. These industries do not fit within the existing statutory language and simply “adding them to the list” will create significant administrative issues and possible litigation.
- Page 1, Lines 20 to 22 and Page 2, Lines 1 to 2 of -9 Amendment - The Department of Agriculture does not have expertise in valuation of equipment and the new requirement for a real market value threshold will require the Department of Revenue to appraise all equipment qualified by ODA. It is currently not clear if the \$100,000 requirement is per item of machinery, or the value of all new equipment in aggregate. If the requirement were changed to be based on cost, as opposed to value, the requirement would be more simple to administer.
- Page 2, Lines 3 to 7 of -9 Amendment - It is not clear what agency is responsible for making determinations about percentages of retail sales at a given facility, nor is it clear what supporting documents the applicant will be required to provide and whether they will need to be recertified annually. We will assume that it is ODA's task.
- Page 4, Lines 16 to 17 of A Engrossed - It is administratively difficult for the bill to be enacted for the 2015 tax year because the Department of Agriculture's certification period has already lapsed.