

Food Processors' Exemption – HB 3125-A10

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 -10 Amendment.

- Page 1, Line 14 to 15 of A Engrossed and Page 2, Line 1 to 4 of A Engrossed - The language here may create an unreasonable expectation because it says that a qualified processing activity “occurs prior to the first point of sale by the processor” and that the equipment be used in “primary processing”, but the -10 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. Under current law applications for property used in secondary processing do not qualify. Unless the listed businesses are processing raw or fresh products the processing will be assumed to be secondary processing and the new equipment will not be qualified under this exemption.
- Page 1, Lines 20 to 22 and Page 2, Lines 1 to 2 of -10 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 for the grain and bakery processors. 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 -10 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.
- The -10 Amendment moves the applicability clause from July 2015 to July 2016. This will remove the conflict that was inherent in the -9 amendment.