

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2337

Chapter 290, Laws of 1996
(partial veto)

54th Legislature
1996 Regular Session

DISTRESSED COUNTY DESIGNATION

EFFECTIVE DATE: 6/6/96 - Except section 1 which becomes effective on 6/30/97; and section 6 which becomes effective on 3/30/96.

Passed by the House March 7, 1996
Yeas 83 Nays 15

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 7, 1996
Yeas 48 Nays 1

JOEL PRITCHARD
President of the Senate

Approved March 30, 1996, with the exception of sections 6 and 7, which are vetoed.

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2337** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 30, 1996 - 4:24 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 2337

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By Representatives Schoesler, Sheldon, Foreman, Grant, Sheahan, Mastin, Honeyford, Basich, Johnson and Mulliken

Read first time 01/10/96. Referred to Committee on Trade & Economic Development.

1 AN ACT Relating to distressed county designation; amending RCW
2 43.160.210, 43.165.010, 43.168.020, 82.60.020, 82.62.010, and
3 82.08.02565; creating a new section; providing an effective date; and
4 declaring an emergency.

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

6 **Sec. 1.** RCW 43.160.210 and 1991 c 314 s 25 are each amended to
7 read as follows:

8 (1) Except as authorized to the contrary under subsection (2) of
9 this section, from all funds available to the board for loans and
10 grants, the board shall spend at least twenty percent for grants and
11 loans for projects in distressed counties. For purposes of this
12 section, the term "distressed counties" includes any county, in which:
13 (a) The average level of unemployment for the three years before the
14 year in which an application for a loan or grant is filed, exceeds the
15 average state employment for those years by twenty percent; or (b) a
16 county that has a median household income that is less than
17 seventy-five percent of the state median household income for the
18 previous three years.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties are clearly insufficient to use up the twenty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for loans and grants for projects not located in distressed counties.

Sec. 2. RCW 43.165.010 and 1995 c 399 s 91 are each amended to read as follows:

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

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of the department.

(3) "Distressed area" means: (a) A county that has an unemployment rate that is twenty percent above the state-wide average for the previous three years; ~~((or))~~ (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (c) a community or area that has experienced sudden and severe or long-term and severe loss of employment, or erosion of its economic base due to decline of its dominant industries; or ~~((+e+))~~ (d) an area within a county which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects.

(4) "Economic development revolving loan funds" means a local, not-for-profit or governmentally sponsored business loan program.

(5) "Team" means the community revitalization team.

(6) "Technical assistance" includes, but is not limited to, assistance with strategic planning, market research, business plan

1 development review, organization and management development, accounting
2 and legal services, grant and loan packaging, and other assistance
3 which may be expected to contribute to the redevelopment and economic
4 well-being of a distressed area.

5 **Sec. 3.** RCW 43.168.020 and 1995 c 226 s 27 are each amended to
6 read as follows:

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

9 (1) "Committee" means the Washington state development loan fund
10 committee.

11 (2) "Department" means the department of community, trade, and
12 economic development.

13 (3) "Director" means the director of community, trade, and economic
14 development.

15 (4) "Distressed area" means: (a) A county which has an
16 unemployment rate which is twenty percent above the state average for
17 the immediately previous three years; (b) a county that has a median
18 household income that is less than seventy-five percent of the state
19 median household income for the previous three years; (c) a
20 metropolitan statistical area, as defined by the office of federal
21 statistical policy and standards, United States department of commerce,
22 in which the average level of unemployment for the calendar year
23 immediately preceding the year in which an application is filed under
24 this chapter exceeds the average state unemployment for such calendar
25 year by twenty percent(~~((. Applications under this subsection (4)(b)~~
26 ~~shall be filed by April 30, 1989; (c)))~~); (d) an area within a county,
27 which area: (i) Is composed of contiguous census tracts; (ii) has a
28 minimum population of five thousand persons; (iii) has at least seventy
29 percent of its families and unrelated individuals with incomes below
30 eighty percent of the county's median income for families and unrelated
31 individuals; and (iv) has an unemployment rate which is at least forty
32 percent higher than the county's unemployment rate; or ~~((+d))~~ (e) a
33 county designated as a rural natural resources impact area under RCW
34 43.31.601 if an application is filed by July 1, ~~((1993))~~ 1997. For
35 purposes of this definition, "families and unrelated individuals" has
36 the same meaning that is ascribed to that term by the federal
37 department of housing and urban development in its regulations

1 authorizing action grants for economic development and neighborhood
2 revitalization projects.

3 (5) "Fund" means the Washington state development loan fund.

4 (6) "Local development organization" means a nonprofit organization
5 which is organized to operate within an area, demonstrates a commitment
6 to a long-standing effort for an economic development program, and
7 makes a demonstrable effort to assist in the employment of unemployed
8 or underemployed residents in an area.

9 (7) "Project" means the establishment of a new or expanded business
10 in an area which when completed will provide employment opportunities.
11 "Project" also means the retention of an existing business in an area
12 which when completed will provide employment opportunities.

13 **Sec. 4.** RCW 82.60.020 and 1995 1st sp.s. c 3 s 5 are each amended
14 to read as follows:

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

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

19 (2) "Department" means the department of revenue.

20 (3) "Eligible area" means: (a) A county in which the average level
21 of unemployment for the three years before the year in which an
22 application is filed under this chapter exceeds the average state
23 unemployment for those years by twenty percent; (b) a county that has
24 a median household income that is less than seventy-five percent of the
25 state median household income for the previous three years; (c) a
26 metropolitan statistical area, as defined by the office of federal
27 statistical policy and standards, United States department of commerce,
28 in which the average level of unemployment for the calendar year
29 immediately preceding the year in which an application is filed under
30 this chapter exceeds the average state unemployment for such calendar
31 year by twenty percent; ~~((+e+))~~ (d) a designated community empowerment
32 zone approved under RCW 43.63A.700 or a county containing such a
33 community empowerment zone; ~~((+d+))~~ (e) a town with a population of
34 less than twelve hundred persons in those counties that are not covered
35 under (a) of this subsection that are timber impact areas as defined in
36 RCW 43.31.601; ~~((+e+))~~ (f) a county designated by the governor as an
37 eligible area under RCW 82.60.047; or ~~((+f+))~~ (g) a county that is

1 contiguous to a county that qualifies as an eligible area under (a) or
2 (~~((e))~~) (f) of this subsection.

3 (4)(a) "Eligible investment project" means:

4 (i) An investment project in an eligible area as defined in
5 subsection (3)(a), (b), (~~((d), or)~~) (c), (e), or (f) of this section;
6 or

7 (ii) That portion of an investment project in an eligible area as
8 defined in subsection (3)(~~((e))~~)(d) or (~~((f))~~) (g) of this section
9 which is directly utilized to create at least one new full-time
10 qualified employment position for each three hundred thousand dollars
11 of investment on which a deferral is requested in an application
12 approved before July 1, 1994, and for each seven hundred fifty thousand
13 dollars of investment on which a deferral is requested in an
14 application approved after June 30, 1994.

15 (b) The lessor/owner of a qualified building is not eligible for a
16 deferral unless the underlying ownership of the buildings, machinery,
17 and equipment vests exclusively in the same person, or unless the
18 lessor by written contract agrees to pass the economic benefit of the
19 deferral to the lessee in the form of reduced rent payments.

20 (c) For purposes of (a)(ii) of this subsection:

21 (i) The department shall consider the entire investment project,
22 including any investment in machinery and equipment that otherwise
23 qualifies for exemption under RCW 82.08.02565 or 82.12.02565, for
24 purposes of determining the portion of the investment project that
25 qualifies for deferral as an eligible investment project; and

26 (ii) The number of new full-time qualified employment positions
27 created by an investment project shall be deemed to be reduced by the
28 number of full-time employment positions maintained by the recipient in
29 any other community in this state that are displaced as a result of the
30 investment project.

31 (d) "Eligible investment project" does not include any portion of
32 an investment project undertaken by a light and power business as
33 defined in RCW 82.16.010(5), other than that portion of a cogeneration
34 project that is used to generate power for consumption within the
35 manufacturing site of which the cogeneration project is an integral
36 part, or investment projects which have already received deferrals
37 under this chapter.

38 (5) "Investment project" means an investment in qualified buildings
39 or qualified machinery and equipment, including labor and services

1 rendered in the planning, installation, and construction of the
2 project.

3 (6) "Manufacturing" means all activities of a commercial or
4 industrial nature wherein labor or skill is applied, by hand or
5 machinery, to materials so that as a result thereof a new, different,
6 or useful substance or article of tangible personal property is
7 produced for sale or commercial or industrial use and shall include the
8 production or fabrication of specially made or custom made articles.
9 "Manufacturing" also includes computer programming, the production of
10 computer software, and other computer-related services, and the
11 activities performed by research and development laboratories and
12 commercial testing laboratories.

13 (7) "Person" has the meaning given in RCW 82.04.030.

14 (8) "Qualified buildings" means construction of new structures, and
15 expansion or renovation of existing structures for the purpose of
16 increasing floor space or production capacity used for manufacturing
17 and research and development activities, including plant offices and
18 warehouses or other facilities for the storage of raw material or
19 finished goods if such facilities are an essential or an integral part
20 of a factory, mill, plant, or laboratory used for manufacturing or
21 research and development. If a building is used partly for
22 manufacturing or research and development and partly for other
23 purposes, the applicable tax deferral shall be determined by
24 apportionment of the costs of construction under rules adopted by the
25 department.

26 (9) "Qualified employment position" means a permanent full-time
27 employee employed in the eligible investment project during the entire
28 tax year.

29 (10) "Qualified machinery and equipment" means all new industrial
30 and research fixtures, equipment, and support facilities that are an
31 integral and necessary part of a manufacturing or research and
32 development operation. "Qualified machinery and equipment" includes:
33 Computers; software; data processing equipment; laboratory equipment;
34 manufacturing components such as belts, pulleys, shafts, and moving
35 parts; molds, tools, and dies; operating structures; and all equipment
36 used to control or operate the machinery.

37 (11) "Recipient" means a person receiving a tax deferral under this
38 chapter.

1 (12) "Research and development" means the development, refinement,
2 testing, marketing, and commercialization of a product, service, or
3 process before commercial sales have begun. As used in this
4 subsection, "commercial sales" excludes sales of prototypes or sales
5 for market testing if the total gross receipts from such sales of the
6 product, service, or process do not exceed one million dollars.

7 **Sec. 5.** RCW 82.62.010 and 1994 sp.s. c 7 s 705 are each amended to
8 read as follows:

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

11 (1) "Applicant" means a person applying for a tax credit under this
12 chapter.

13 (2) "Department" means the department of revenue.

14 (3) "Eligible area" means: (a) A county in which the average level
15 of unemployment for the three years before the year in which an
16 application is filed under this chapter exceeds the average state
17 unemployment for those years by twenty percent; (b) a county that has
18 a median household income that is less than seventy-five percent of the
19 state median household income for the previous three years; (c) a
20 metropolitan statistical area, as defined by the office of federal
21 statistical policy and standards, United States department of commerce,
22 in which the average level of unemployment for the calendar year
23 immediately preceding the year in which an application is filed under
24 this chapter exceeds the average state unemployment for such calendar
25 year by twenty percent; ~~((+e+))~~ (d) a designated community empowerment
26 zone approved under RCW 43.63A.700; or ~~((+d+))~~ (e) subcounty areas in
27 those counties that are not covered under (a) of this subsection that
28 are timber impact areas as defined in RCW 43.31.601.

29 (4)(a) "Eligible business project" means manufacturing or research
30 and development activities which are conducted by an applicant in an
31 eligible area at a specific facility, provided the applicant's average
32 full-time qualified employment positions at the specific facility will
33 be at least fifteen percent greater in the year for which the credit is
34 being sought than the applicant's average full-time qualified
35 employment positions at the same facility in the immediately preceding
36 year.

37 (b) "Eligible business project" does not include any portion of a
38 business project undertaken by a light and power business as defined in

1 RCW 82.16.010(5) or that portion of a business project creating
2 qualified full-time employment positions outside an eligible area or
3 those recipients of a sales tax deferral under chapter 82.61 RCW.

4 (5) "Manufacturing" means all activities of a commercial or
5 industrial nature wherein labor or skill is applied, by hand or
6 machinery, to materials so that as a result thereof a new, different,
7 or useful substance or article of tangible personal property is
8 produced for sale or commercial or industrial use and shall include the
9 production or fabrication of specially made or custom made articles.
10 "Manufacturing" also includes computer programming, the production of
11 computer software, and other computer-related services, and the
12 activities performed by research and development laboratories and
13 commercial testing laboratories.

14 (6) "Person" has the meaning given in RCW 82.04.030.

15 (7) "Qualified employment position" means a permanent full-time
16 employee employed in the eligible business project during the entire
17 tax year.

18 (8) "Tax year" means the calendar year in which taxes are due.

19 (9) "Recipient" means a person receiving tax credits under this
20 chapter.

21 (10) "Research and development" means the development, refinement,
22 testing, marketing, and commercialization of a product, service, or
23 process before commercial sales have begun. As used in this
24 subsection, "commercial sales" excludes sales of prototypes or sales
25 for market testing if the total gross receipts from such sales of the
26 product, service, or process do not exceed one million dollars.

27 **Sec. 6. RCW 82.08.02565 and 1995 1st sp.s. c 3 s 2 are each*
28 *amended to read as follows:*

29 *(1) The tax levied by RCW 82.08.020 shall not apply to sales to a*
30 *manufacturer or processor for hire of machinery and equipment used*
31 *directly in a manufacturing operation, or to sales of or charges made*
32 *for labor and services rendered in respect to installing the machinery*
33 *and equipment, but only when the purchaser provides the seller with an*
34 *exemption certificate in a form and manner prescribed by the department*
35 *by rule, and the purchaser provides the department with a duplicate of*
36 *the certificate or a summary of exempt sales as the department may*
37 *require. The seller shall retain a copy of the certificate for the*
38 *seller's files.*

1 (2) For purposes of this section and RCW 82.12.02565:

2 (a) "Machinery and equipment" means industrial fixtures, devices,
3 and support facilities. "Machinery and equipment" includes pollution
4 control equipment installed and used in a manufacturing operation to
5 prevent air pollution, water pollution, or contamination that might
6 otherwise result from the manufacturing operation.

7 (b) "Machinery and equipment" does not include:

8 (i) Hand tools;

9 (ii) Property with a useful life of less than one year;

10 (iii) Repair parts required to restore machinery and equipment to
11 normal working order;

12 (iv) Replacement parts that do not increase productivity, improve
13 efficiency, or extend the useful life of the machinery and equipment;
14 or

15 (v) Building fixtures that are not integral to the manufacturing
16 operation that are permanently affixed to and become a physical part of
17 a building, such as utility systems for heating, ventilation, air
18 conditioning, communications, plumbing, or electrical.

19 (c) Machinery and equipment is "used directly" in a manufacturing
20 operation if the machinery and equipment:

21 (i) Acts upon or interacts with an item of tangible personal
22 property;

23 (ii) Conveys, transports, handles, or temporarily stores an item of
24 tangible personal property at the manufacturing site;

25 (iii) Controls, guides, measures, verifies, aligns, regulates, or
26 tests tangible personal property;

27 (iv) Provides physical support for or access to tangible personal
28 property;

29 (v) Produces power for, or lubricates machinery and equipment;

30 (vi) Produces another item of tangible personal property for use in
31 the manufacturing operation; or

32 (vii) Places tangible personal property in the container, package,
33 or wrapping in which the tangible personal property is normally sold or
34 transported.

35 (d) "Manufacturing operation" means the manufacturing of articles,
36 substances, or commodities for sale as tangible personal property. The
37 manufacturing operation begins at the point where the raw materials
38 enter the manufacturing site and ends at the point where the finished
39 product leaves the manufacturing site. In the case of the

1 manufacturing of building trusses in eligible areas, as defined in RCW
2 82.60.020(3)(e), the manufacturing operation ends at the point where
3 the finished product is delivered to the building site. The term also
4 includes that portion of a cogeneration project that is used to
5 generate power for consumption within the manufacturing site of which
6 the cogeneration project is an integral part. The term does not
7 include research and development, the production of electricity by a
8 light and power business as defined in RCW 82.16.010, or the
9 preparation of food products on the premises of a person selling food
10 products at retail.

11 (e) "Cogeneration" means the simultaneous generation of electrical
12 energy and low-grade heat from the same fuel.

13 *Sec. 6 was vetoed. See message at end of chapter.

14 *NEW SECTION. Sec. 7. Section 6 of this act applies to
15 manufacturing machinery and equipment acquired after June 30, 1995.

16 *Sec. 7 was vetoed. See message at end of chapter.

17 NEW SECTION. Sec. 8. (1) Section 6 of this act is necessary for
18 the immediate preservation of the public peace, health, or safety, or
19 support of the state government and its existing public institutions,
20 and shall take effect immediately.

21 (2) Section 1 of this act shall take effect June 30, 1997.

Passed the House March 7, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 30, 1996, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1996.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 6 and
3 7, House Bill No. 2337 entitled:

4 "AN ACT Relating to distressed county designation;"

5 House Bill No. 2337 changes the definition of "eligible area" for
6 purposes of the distressed area sales and use tax deferral program and
7 other state programs and amends the definition of "manufacturing
8 operation" for purposes of the manufacturer's sales and use tax
9 exemption for purchases of machinery and equipment.

10 Section 6 of House Bill No. 2337 changes the definition of
11 "manufacturing operation" so as to extend the manufacturer's sales and
12 use tax exemption to purchases of vehicles used in timber impact areas
13 to deliver trusses to a construction site. This legislation would
14 establish a disturbing precedent. For purposes of a tax exemption, it
15 would extend the concept of a manufacturing facility beyond the

1 physical plant at which machinery and equipment are used to make a
2 product to include the equipment used to deliver the product to the
3 customer. This is contrary to the aim of the exemption enacted in the
4 1995 session.

5 Section 7 indicates that the change in section 6 applies
6 retroactively to purchases made after June 30, 1995. The retroactive
7 nature of this section does not represent sound tax policy. It rewards
8 taxpayers who choose not to pay a lawful tax and encourages others to
9 take similar action and to seek narrow legislative exemptions.

10 For these reasons, I have vetoed sections 6 and 7 of House Bill No.
11 2337.

12 With the exception of sections 6 and 7, House Bill No. 2337 is
13 approved."