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**SUBSTITUTE HOUSE BILL 2977**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Finance (originally sponsored by Representatives Short, Kretz, and Schmick)

AN ACT Relating to encouraging job creation and retention in rural economies through the transparent and accountable provision of targeted tax relief for silicon smelters; amending RCW 82.12.022; adding a new section to chapter 82.16 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.32 RCW; creating new sections; providing an effective date; providing a contingent expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that an opportunity exists through a smelting process that will produce silicon metal, which can be used in the production of photovoltaic cells for solar energy systems. The legislature further finds that energy is one of the largest costs for the smelting process and ensuring the lowest possible energy cost is one of the key drivers of business location decisions. The legislature further finds that the silicon smelting process creates an opportunity to reduce carbon dioxide emissions used in the manufacturing of materials for solar energy systems. The legislature further finds that if the silicon smelting process occurs in Washington, the carbon footprint of the end product solar energy systems is likely to be less than if the silicon smelting occurred elsewhere. It is the legislature's specific public policy objective to promote the manufacturing of silicon for use in production of photovoltaic cells for solar energy systems. The legislature intends to provide a public utility tax credit, a business and occupation tax credit, and an exemption from the brokered natural gas use tax for silicon smelters thereby promoting the manufacture of silicon for solar energy systems, thereby reducing the cost of energy in the smelting process, and thereby stimulating economic growth and job creation in Washington's rural communities.

(2)(a) This section is the tax preference performance statement for the tax preferences contained in this act. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preferences in sections 2 through 4 of this act as ones intended to create jobs, as indicated in RCW 82.32.808(2)(c) and to provide tax relief for certain businesses or individuals as indicated in RCW 82.32.808(2)(e).

(c) To measure the effectiveness of this act in achieving the specific public policy objective described in (b) of this subsection, the joint legislative audit and review committee must, at minimum, evaluate the following:

(i) The number of businesses who are claiming the tax preferences in sections 2 through 4 of this act, and the total relief provided to them, as reported to the department of revenue on an annual basis;

(ii) The number of taxpayers who benefit from the tax preferences in sections 2 through 4 of this act, and the total relief provided to them, as reported to the department of revenue on an annual basis; and

(iii) The volume of processed silicon made in Washington compared to years prior to the effective date of this section.

(d) In addition to the data sources described under this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (c) of this subsection.

(e) The joint legislative audit and review committee must review the tax preferences provided in this act by April 1, 2021. The committee must specifically assess the number of employment positions for silicon smelters claiming or receiving the benefit of the preferences in sections 2 through 4 of this act, using data provided by the department of revenue, and estimate the cost per job based on the amount of tax preferences taken by eligible persons. The committee must also consider how many solar energy systems were likely produced using Washington state processed silicon based on the volume of silicon smelted in Washington at facilities utilizing the incentive. The committee must also consider the number of jobs paying above county median average in the county in which the facility is located and the proportion of such above-median jobs in the county represented by the jobs provided by the business utilizing the incentive.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual survey required by RCW 82.32.808(5):

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual survey; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual survey.

(6) For the purposes of this section, "silicon smelter" means a manufacturing facility that processes silica into solar grade silicon. "Solar grade silicon" has the same meaning as provided in RCW 82.04.294.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual survey required by RCW 82.32.808(5):

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual survey; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual survey.

(6) For the purposes of this section, "silicon smelter" has the same meaning as provided in section 2 of this act.

**Sec.**  RCW 82.12.022 and 2015 3rd sp.s. c 6 s 506 are each amended to read as follows:

(1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2027.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual report with the department under RCW 82.32.534.

(6) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(7) The tax levied in this section does not apply to the use of natural or manufactured gas by a silicon smelter as that term is defined in section 2 of this act.

(8) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

((~~(8)~~)) (9) The use tax imposed in this section must be paid by the consumer to the department.

((~~(9)~~)) (10) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

((~~(10)~~)) (11) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) A silicon smelter operated by a person required to submit an annual survey under section 2 of this act must repay an amount equal to the entire economic benefit accruing to the person due to the tax preferences under sections 2 through 4 of this act, between May 1, 2016, through June 30, 2021, if:

(i) The average number of employment positions at a silicon smelter operated by the person is less than one hundred employment positions, as reported to the employment security department for the 2019 and 2020 calendar years; and

(ii) The average wage for all employment positions is less than ten percent above the median household income for the county in which the silicon smelter operation is located for the 2019 and 2020 calendar years. The department must use the median household income for the county as reported by the office of financial management and wage data reported to the employment security department.

(b) The department must make the determinations under (a)(i) and (ii) of this subsection (1) in the second calendar quarter of 2021.

(2) If any tax preference amounts must be repaid under subsection (1) of this section, the department must declare the tax preference amounts to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The department must assess interest at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and such interest accrues until the tax preference amounts are repaid.

(3) If any tax preference amounts must be repaid under subsection (1) of this section, the person may not continue to benefit from the tax preferences under sections 2 through 4 of this act.

NEW SECTION. **Sec.**  (1) This act expires on July 1, 2021, if a person must make repayment under section 5 of this act.

(2) The department of revenue must provide written notice of the expiration date of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 1, 2016.

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