S-0582.2

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**SENATE BILL 5332**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Warnick, Takko, and Sheldon

AN ACT Relating to extending the expiration date of the public utility tax exemption for certain electrolytic processing businesses; amending RCW 82.16.0421; creating a new section; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 2 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to create or retain jobs and improve industry competitiveness as indicated in RCW 82.32.808(2) (b) and (c).

(3) It is the legislature's specific public policy objective to maintain the industry competitiveness of electrolytic processing businesses in Washington created under the existing tax exemption in RCW 82.16.0421 and thereby enable such businesses to continue to provide family-wage jobs in our state. The legislature recognizes that since 2004 when the public utility tax exemption in RCW 82.16.0421 was initially enacted, electrolytic processing businesses receiving the exemption have demonstrated the ability to successfully apply their tax savings towards maintaining competitiveness, while still providing family-wage jobs. Therefore, it is the legislature's intent to extend the expiration date of the existing public utility tax exemption under RCW 82.16.0421 for chlor-alkali electrolytic processing businesses and sodium chlorate electrolytic processing businesses in order to:

(a) Maintain industry competitiveness for such electrolytic processing businesses, who rely on electricity as a primary manufacturing input, in Washington by recognizing uncertain electric energy costs and offsetting tax advantages available to competing firms outside of Washington; and

(b) Retain existing family-wage jobs in Washington by enabling electrolytic processing businesses to maintain production of chlor-alkali and sodium chlorate at a level that preserves at least seventy-five percent of the jobs that were on the payroll of electrolytic processing businesses as of the date that the tax exemption was initially put in place, January 1, 2004.

(4) To measure the effectiveness of the tax preference provided in section 2 of this act in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must review the impact of the tax preference on maintaining jobs in electrolytic processing businesses in Washington. If the joint legislative audit and review committee finds, as a result of the new tax preference in section 2 of this act, that jobs in chlor-alkali electrolytic processing businesses and sodium chlorate electrolytic processing businesses have been preserved at a level of at least seventy-five percent of the jobs that were on the payroll of such electrolytic processing businesses as of January 1, 2004, the legislature intends to extend the expiration date of the tax exemption in RCW 82.16.0421. If the joint legislative audit and review committee finds that the number of such electrolytic processing business jobs in Washington has been maintained at less than 2004 levels, then the joint legislative audit and review committee must make recommendations on how the tax preference can be improved to accomplish that legislative objective.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this act, the joint legislative audit and review committee may refer to data provided to the department of revenue pursuant to annual reporting requirements under RCW 82.32.534.

**Sec.**  RCW 82.16.0421 and 2010 c 114 s 133 are each amended to read as follows:

(1) ((~~For the purposes of this section:~~)) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "chlor-alkali electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(b) "Sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "sodium chlorate electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(2) Effective July 1, 2004, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process if the contract for sale of electricity to the business contains the following terms:

(a) The electricity to be used in the electrolytic process is separately metered from the electricity used for general operations of the business;

(b) The price charged for the electricity used in the electrolytic process will be reduced by an amount equal to the tax exemption available to the light and power business under this section; and

(c) Disallowance of all or part of the exemption under this section is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business are the amount of the tax exemption disallowed.

(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 electrolytic process.

(4) In order to claim an exemption under this section, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(5) A person receiving the benefit of the exemption provided in this section must file a complete annual report with the department under RCW 82.32.534.

(6)(a) This section does not apply to sales of electricity made after December 31, ((~~2018~~)) 2028.

(b) This section expires ((~~June 30, 2019~~)) July 1, 2029.

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