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**SUBSTITUTE HOUSE BILL 1381**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Technology & Economic Development (originally sponsored by Representatives Buys, Lytton, Van Werven, Blake, Wilcox, Condotta, Nealey, and Morris)

AN ACT Relating to encouraging job retention and creation in rural economies through the transparent and accountable extension of aluminum smelter tax preferences; amending RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, 82.12.022, and 82.32.534; adding a new section to chapter 82.32 RCW; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1)(a) The legislature finds that the aluminum industry in Washington benefits from a myriad of tax preferences, i.e. tax breaks, which are unavailable to most other businesses. The legislature further finds that this array of tax preferences includes a preferential business and occupation tax rate, an exemption from all state and local property taxes, a sales tax exemption on materials and labor used in the construction of an aluminum smelter, and a use tax exemption on brokered natural gas that is used as fuel in its manufacturing process. The legislature further finds that the property tax exemption is structured as a business and occupation tax credit, which requires the state to subsidize the local property tax exemption thereby substantially increasing the overall fiscal impact to the state. The legislature further finds that the aluminum industry has benefited from these tax preferences for over a decade, which are set to expire on January 1, 2017.

(b) The legislature further finds that the Washington aluminum industry employs over one thousand people who earn, on average, annual wages and benefits exceeding one hundred thousand dollars. The legislature further finds that these employment positions indirectly generate an additional two to three jobs within the state. The legislature further finds that even though the aluminum industry nationwide may be profitable, the business units in Washington struggle with profitability due to the lingering effects of the global economic recession, energy costs, and the volatility of aluminum on commodity exchanges.

(c) The legislature further finds that the tax preferences described under (a) of this subsection (1) are economic development tax incentives intended to retain and grow family-wage jobs in the aluminum industry during a temporary period of unprofitability for Washington-based business units. The legislature further finds that economic development tax incentives create a social contract between the state and the taxpayer whereby the state foregoes tax revenue in exchange for the retention or growth of well-paying jobs in counties particularly dependent upon the aluminum industry employment base. The legislature further finds that with respect to the aluminum industry tax preferences, legislators, as well as the public, need accurate information to determine whether the taxpayer benefiting from the preferences is adhering to the terms and conditions of the social contract: An extension of tax preferences due to a temporary period of unprofitability for aluminum business units in the state, job retention and growth, and the continued payment of family-level wages in counties particularly dependent upon the aluminum industry employment base.

(2)(a) This subsection is the tax preference performance statement for the aluminum industry tax preferences in RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), as amended in this act. The 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.

(b) The legislature categorizes this tax preference as one intended to accomplish the general purposes indicated in RCW 82.32.808(2) (c) and (d).

(c) It is the legislature's specific public policy objective to maintain and increase family-wage employment positions within the Washington aluminum manufacturing industry by using state tax resources to subsidize temporarily unprofitable Washington-based aluminum smelting business units in a fashion that does not subsidize profitable, global corporate parent entities by channeling state tax savings into dividends, executive salaries, or other spending inconsistent with the legislature's objectives of Washington job retention and growth.

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

(i) Changes in the number of statewide employment positions and wages at the two largest aluminum smelters operating in Washington;

(ii) Changes in the price of aluminum on the London metal exchange;

(iii) Firm-wide changes in alumina price index and spot pricing as a percentage of third-party shipments for the largest aluminum manufacturing firm operating in Washington;

(iv) Changes in Bonneville power administration contracted power prices for the largest aluminum manufacturing firm operating in Washington; and

(v) Changes in the profitability of aluminum smelters as indicated on the certified financial statements of profitability required under RCW 82.32.534.

(e)(i) The information provided in the annual report submitted by taxpayers under RCW 82.32.534, including the certified financial statements of profitability, employment and wage data provided by the state employment security department, and information provided in the firm-wide annual financial report for the largest manufacturing firm operating an aluminum smelter in Washington, is intended to provide the informational basis for the evaluation under (d) of this subsection.

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

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

(1) A person must repay the tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5) as follows:

(a) A person must repay ten percent of the tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), for taxes that would have otherwise been due and payable on or after August 1, 2015, if the number of employment positions at an aluminum smelter operated by the person is ten or more percent below, but less than twenty percent below, the average number of employment positions reported to the employment security department for the five prior calendar years.

(b) A person must repay twenty percent of the tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), for taxes that would have otherwise been due and payable on or after August 1, 2015, if the number of employment positions at an aluminum smelter operated by the person is twenty or more percent below, but less than thirty percent below, the average number of employment positions reported to the employment security department for the five prior calendar years.

(c) A person must repay thirty percent of the tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), for taxes that would have otherwise been due and payable on or after August 1, 2015, if the number of employment positions at an aluminum smelter operated by the person is thirty or more percent below, but less than forty percent below, the average number of employment positions reported to the employment security department for the five prior calendar years.

(d) A person must repay forty percent of the tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), for taxes that would have otherwise been due and payable on or after August 1, 2015, if the number of employment positions at an aluminum smelter operated by the person is forty or more percent below, but less than fifty percent below, the average number of employment positions reported to the employment security department for the five prior calendar years.

(e) A person must repay all tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), for taxes that would have otherwise been due and payable on or after August 1, 2015, if the number of employment positions at an aluminum smelter operated by the person is fifty or more percent below the average number of employment positions reported to the employment security department for the five prior calendar years.

(2) A person must repay all tax preference amounts saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), for taxes that would have otherwise been due and payable on or after July 1, 2015, if the average wage in the prior calendar year is less than fifty thousand dollars.

(3) If any tax preference amounts must be repaid under subsection (1) or (2) 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 chapter 82.32 RCW, retroactively to the date the tax preference was claimed, and such interest accrues until the tax preference amounts are repaid.

(4) If any tax preference amounts must be repaid under subsection (1) or (2) of this section, the person may not continue to claim the tax preferences under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5). For tax preference amounts that need to be repaid under subsection (1) of this section, the person may not claim the tax preferences for tax reporting periods that begin on or after the first month in which the number of employment positions reported to the employment security department decreased by an amount requiring repayment of taxes under subsection (1) of this section.

(5) This section does not apply to any changes in the number of employment positions or wages at an aluminum smelter that occur on or after July 1, 2025.

(6) For the purposes of this section, "average wage" equals the total wages reported to the employment security department for the aluminum smelter during the calendar year divided by the average number of employment positions reported to the employment security department for the same calendar year.

**Sec.**  RCW 82.04.2909 and 2011 c 174 s 301 are each amended to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) A person who is required to repay tax preference amounts under section 2 of this act may not claim the preferential rate under this section as provided in section 2 of this act.

(5) This section expires January 1, ((~~2017~~)) 2022.

**Sec.**  RCW 82.04.4481 and 2011 c 174 s 302 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person claiming the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in ((~~2017~~)) 2022 and thereafter.

(4) A person who is required to repay tax preference amounts under section 2 of this act may not claim the preferential rate under this section as provided in section 2 of this act.

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

**Sec.**  RCW 82.08.805 and 2011 c 174 s 303 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person claiming the tax preference provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) A person who is required to repay tax preference amounts under section 2 of this act may not claim the preferential rate under this section as provided in section 2 of this act.

(5) Credits may not be claimed under this section for taxable events occurring on or after January 1, ((~~2017~~)) 2022.

**Sec.**  RCW 82.12.805 and 2011 c 174 s 305 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit equals the state share of use tax computed to be due under RCW 82.12.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) A person who is required to repay tax preference amounts under section 2 of this act may not claim the preferential rate under this section as provided in section 2 of this act.

(5) Credits may not be claimed under this section for taxable events occurring on or after January 1, ((~~2017~~)) 2022.

**Sec.**  RCW 82.12.022 and 2014 c 216 s 304 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, 2017.

(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. A person who is required to repay tax preference amounts under section 2 of this act may not claim the exemption under this subsection (5) as provided in section 2 of this act.

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

(9) 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) 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.

**Sec.**  RCW 82.32.534 and 2014 c 97 s 102 are each amended to read as follows:

(1)(a) Every person claiming a tax preference that requires a report under this section must file a complete annual report with the department. The report is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section. The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) For persons claiming the tax preferences under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), the report must include the amount of the tax preferences claimed in the calendar year covered by the report and must include a certified financial statement of profitability that has been prepared in accordance with generally accepted accounting principles. This subsection (1)(d) applies to reports filed for calendar year 2016 and thereafter.

(e) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2) As part of the annual report, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(3) Other than information requested under subsection (2) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by December 1st.

(6) For the purposes of this section:

(a) "Certified statement of profitability" means:

(i) A financial statement prepared in accordance with generally accepted accounting principles that indicates the gross income, gross profit, operating profit, and net profit of an aluminum smelter, as defined in RCW 82.04.217; and

(ii) An affidavit by the person claiming the preference, attesting that the financial statement is prepared in accordance with generally accepted accounting principles.

(b) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

((~~(b)~~)) (c) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a survey under this section.

NEW SECTION. **Sec.**  This act takes effect August 1, 2015.

**--- END ---**