
SUBSTITUTE HOUSE BILL 2977

State of Washington

64th Legislature

2016 Regular Session

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

READ FIRST TIME 02/29/16.

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

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that an
10 opportunity exists through a smelting process that will produce
11 silicon metal, which can be used in the production of photovoltaic
12 cells for solar energy systems. The legislature further finds that
13 energy is one of the largest costs for the smelting process and
14 ensuring the lowest possible energy cost is one of the key drivers of
15 business location decisions. The legislature further finds that the
16 silicon smelting process creates an opportunity to reduce carbon
17 dioxide emissions used in the manufacturing of materials for solar
18 energy systems. The legislature further finds that if the silicon
19 smelting process occurs in Washington, the carbon footprint of the
20 end product solar energy systems is likely to be less than if the
21 silicon smelting occurred elsewhere. It is the legislature's specific

1 public policy objective to promote the manufacturing of silicon for
2 use in production of photovoltaic cells for solar energy systems. The
3 legislature intends to provide a public utility tax credit, a
4 business and occupation tax credit, and an exemption from the
5 brokered natural gas use tax for silicon smelters thereby promoting
6 the manufacture of silicon for solar energy systems, thereby reducing
7 the cost of energy in the smelting process, and thereby stimulating
8 economic growth and job creation in Washington's rural communities.

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

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

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

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

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

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

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

36 (e) The joint legislative audit and review committee must review
37 the tax preferences provided in this act by April 1, 2021. The
38 committee must specifically assess the number of employment positions
39 for silicon smelters claiming or receiving the benefit of the
40 preferences in sections 2 through 4 of this act, using data provided

1 by the department of revenue, and estimate the cost per job based on
2 the amount of tax preferences taken by eligible persons. The
3 committee must also consider how many solar energy systems were
4 likely produced using Washington state processed silicon based on the
5 volume of silicon smelted in Washington at facilities utilizing the
6 incentive. The committee must also consider the number of jobs paying
7 above county median average in the county in which the facility is
8 located and the proportion of such above-median jobs in the county
9 represented by the jobs provided by the business utilizing the
10 incentive.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.16
12 RCW to read as follows:

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

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

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

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

29 (5) For purposes of the annual survey required by RCW
30 82.32.808(5):

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

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

37 (6) For the purposes of this section, "silicon smelter" means a
38 manufacturing facility that processes silica into solar grade

1 silicon. "Solar grade silicon" has the same meaning as provided in
2 RCW 82.04.294.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04
4 RCW to read as follows:

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

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

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

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

21 (5) For purposes of the annual survey required by RCW
22 82.32.808(5):

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

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

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

31 **Sec. 4.** RCW 82.12.022 and 2015 3rd sp.s. c 6 s 506 are each
32 amended to read as follows:

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

37 (2) The tax must be levied and collected in an amount equal to
38 the value of the article used by the taxpayer multiplied by the rate

1 in effect for the public utility tax on gas distribution businesses
2 under RCW 82.16.020. The "value of the article used" does not include
3 any amounts that are paid for the hire or use of a gas distribution
4 business as defined in RCW 82.16.010(2) in transporting the gas
5 subject to tax under this subsection if those amounts are subject to
6 tax under that chapter.

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

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

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

17 (b) A person claiming the exemption provided in this subsection
18 (5) must file a complete annual report with the department under RCW
19 82.32.534.

20 (6) The tax imposed by this section does not apply to the use of
21 natural gas, compressed natural gas, or liquefied natural gas, if the
22 consumer uses the gas for transportation fuel as defined in RCW
23 82.16.310.

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

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

29 (a) The person who sold the gas to the consumer when that tax is
30 a gross receipts tax similar to that imposed pursuant to RCW
31 82.16.020 by another state with respect to the gas for which a credit
32 is sought under this subsection; or

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

37 ((+8)) (9) The use tax imposed in this section must be paid by
38 the consumer to the department.

39 ((+9)) (10) There is imposed a reporting requirement on the
40 person who delivered the gas to the consumer to make a quarterly

1 report to the department. Such report must contain the volume of gas
2 delivered, name of the consumer to whom delivered, and such other
3 information as the department may require by rule.

4 ~~((+10))~~ (11) The department may adopt rules under chapter 34.05
5 RCW for the administration and enforcement of sections 1 through 6,
6 chapter 384, Laws of 1989.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.32
8 RCW to read as follows:

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

14 (i) The average number of employment positions at a silicon
15 smelter operated by the person is less than one hundred employment
16 positions, as reported to the employment security department for the
17 2019 and 2020 calendar years; and

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

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

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

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

37 NEW SECTION. **Sec. 6.** (1) This act expires on July 1, 2021, if a
38 person must make repayment under section 5 of this act.

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

6 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of
8 the state government and its existing public institutions, and takes
9 effect May 1, 2016.

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