Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Technology & Economic Development Committee

HB 1403

Brief Description: Encouraging job creation and retention in rural economies through the transparent and accountable provision of targeted tax relief for silicon smelters.

Sponsors: Representatives Short, Springer, Kretz, Wilcox, Blake, Schmick, Muri, Lytton and Morris.

Brief Summary of Bill

- Establishes a public utility tax and business and occupation tax credit for a utility that sells manufactured gas, natural gas, or electricity to a silicon smelter.
- Provides a brokered natural gas use tax exemption to silicon smelters for the use of manufactured or natural gas if shipped directly to the smelter through a pipeline.

Hearing Date: 1/25/17

Staff: Nikkole Hughes (786-7156).

Background:

Public Utility Tax.

Income from utility operations is taxed under the public utility tax (PUT) in lieu of the business and occupation (B&O) tax. Other income of the utility, such as retail sales of tangible personal property, is subject to the B&O tax. The PUT applies only on sales to consumers. Five different rates apply, depending upon the specific utility activity. The current rates, including permanent surtaxes, are as follows:

- water distribution businesses, 5.029 percent;
- light and power businesses, 3.873 percent;
- telegraph, natural gas, and sewerage businesses, 3.852 percent;
- urban transportation and watercraft vessels under 65 feet in length, 0.642 percent; and

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- railroads, railroad car companies, motor transportation, and all other public service businesses, 1.926 percent.

Business and Occupation Tax.

Washington's major business tax is the B&O tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay a B&O tax even though they may not have any profits or may be operating at a loss. A business may have more than one B&O tax rate, depending on the types of activities conducted. Major tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services and activities not classified elsewhere. Several lower rates apply to specific business activities.

Brokered Natural Gas Use Tax.

A use tax is levied on businesses that use natural or manufactured gas within the state if the gas is shipped directly to the business through a pipeline. The use tax rate is equal to the PUT rate for gas distribution businesses. The use tax is not levied on gas that is delivered by some other means for which the PUT tax has already been paid.

Tax Preference Performance Statement.

All new tax preference legislation is required to include a tax preference performance statement. The performance statement must clearly specify the public policy objectives of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference. An automatic 10-year expiration date applies to new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

Summary of Bill:

Public Utility Tax and Business and Occupation Tax Credits.

A utility that provides manufactured gas, natural gas, or electricity to a silicon smelter is eligible for a PUT credit equal to the gross income from the sale of the electricity or gas to the silicon smelter multiplied by the PUT rate, provided that the contract for the sale of electricity or gas to the silicon smelter specifies that the price charged will be reduced by an amount equal to the credit. "Silicon smelter" means a manufacturing facility that processes silica into high-purity silicon used exclusively in components of photovoltaic solar energy systems.

A utility that provides manufactured gas, natural gas, or electricity to a silicon smelter is eligible for a B&O tax credit equal to the gross income from the sale of the electricity or gas to the silicon smelter multiplied by the corresponding B&O tax rate, provided that the contract for the sale of electricity or gas to the silicon smelter specifies that the price charged will be reduced by an amount equal to the credit.

The PUT and B&O tax credits available to a utility provider of gas or electricity to a silicon smelter do not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

Brokered Natural Gas Use Tax.

A silicon smelter that uses manufactured or natural gas that was delivered directly through a pipeline is exempt from the brokered natural gas use tax.

Beneficiary Requirements.

A silicon smelter that receives the benefit of the PUT and B&O tax credits available to a utility provider must file an annual survey with the Department of Revenue (DOR). A silicon smelter must repay an amount equal to the entire economic benefit it received from the tax credits for the previous two calendar years if:

- the average number of employment positions at the silicon smelter is less than 100, as reported to the Employment Security Department for the previous two calendar years; and
- the average annual wage for all employment positions is equal to or less than the average annual wage for the previous two calendar years for the county in which the silicon smelter is located.

The DOR must make a determination as to whether or not repayment by the silicon smelter is required by August 31, 2023. If the DOR determines that repayment is necessary, the tax preference expires January 1, 2024. If the DOR determines that repayment is not necessary, the tax preference expires July 1, 2027.

Tax Preference Performance Statement.

The tax preferences established in the bill must be reviewed by the JLARC during the committee's normal 10-year review cycle. The JLARC must specifically look at the number of beneficiaries receiving the PUT and B&O tax credits and smelters receiving the benefit through reduced prices of electricity and gas. The JLARC must also include specific job metrics as part of the review. The JLARC is not required to perform its tax preference evaluation if the tax preference expires on January 1, 2024.

Appropriation: None.

Fiscal Note: Requested on January 23, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.