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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)

1 AN ACT Relating to encouraging job retention and creation in  
2 rural economies through the transparent and accountable extension of  
3 aluminum smelter tax preferences; amending RCW 82.04.2909,  
4 82.04.4481, 82.08.805, 82.12.805, 82.12.022, and 82.32.534; adding a  
5 new section to chapter 82.32 RCW; creating a new section; providing  
6 an effective date; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that the  
9 aluminum industry in Washington benefits from a myriad of tax  
10 preferences, i.e. tax breaks, which are unavailable to most other  
11 businesses. The legislature further finds that this array of tax  
12 preferences includes a preferential business and occupation tax rate,  
13 an exemption from all state and local property taxes, a sales tax  
14 exemption on materials and labor used in the construction of an  
15 aluminum smelter, and a use tax exemption on brokered natural gas  
16 that is used as fuel in its manufacturing process. The legislature  
17 further finds that the property tax exemption is structured as a  
18 business and occupation tax credit, which requires the state to  
19 subsidize the local property tax exemption thereby substantially  
20 increasing the overall fiscal impact to the state. The legislature  
21 further finds that the aluminum industry has benefited from these tax

1 preferences for over a decade, which are set to expire on January 1,  
2 2017.

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

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

31 (2)(a) This subsection is the tax preference performance  
32 statement for the aluminum industry tax preferences in RCW  
33 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), as  
34 amended in this act. The performance statement is only intended to be  
35 used for subsequent evaluation of the tax preference. It is not  
36 intended to create a private right of action by any party or be used  
37 to determine eligibility for preferential tax treatment.

38 (b) The legislature categorizes this tax preference as one  
39 intended to accomplish the general purposes indicated in RCW  
40 82.32.808(2) (c) and (d).

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32

2 RCW to read as follows:

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

6 (a) A person must repay ten percent of the tax preference amounts  
7 saved under RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and  
8 82.12.022(5), for taxes that would have otherwise been due and  
9 payable on or after August 1, 2015, if the number of employment  
10 positions at an aluminum smelter operated by the person is ten or  
11 more percent below, but less than twenty percent below, the average  
12 number of employment positions reported to the employment security  
13 department for the five prior calendar years.

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

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

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

38 (e) A person must repay all tax preference amounts saved under  
39 RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5),  
40 for taxes that would have otherwise been due and payable on or after

1 August 1, 2015, if the number of employment positions at an aluminum  
2 smelter operated by the person is fifty or more percent below the  
3 average number of employment positions reported to the employment  
4 security department for the five prior calendar years.

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

10 (3) If any tax preference amounts must be repaid under subsection  
11 (1) or (2) of this section, the department must declare the tax  
12 preference amounts to be immediately due and payable. The department  
13 must assess interest, but not penalties, on the amounts due under  
14 this subsection. The department must assess interest at the rate  
15 provided for delinquent taxes under chapter 82.32 RCW, retroactively  
16 to the date the tax preference was claimed, and such interest accrues  
17 until the tax preference amounts are repaid.

18 (4) If any tax preference amounts must be repaid under subsection  
19 (1) or (2) of this section, the person may not continue to claim the  
20 tax preferences under RCW 82.04.2909, 82.04.4481, 82.08.805,  
21 82.12.805, or 82.12.022(5). For tax preference amounts that need to  
22 be repaid under subsection (1) of this section, the person may not  
23 claim the tax preferences for tax reporting periods that begin on or  
24 after the first month in which the number of employment positions  
25 reported to the employment security department decreased by an amount  
26 requiring repayment of taxes under subsection (1) of this section.

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

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

35 **Sec. 3.** RCW 82.04.2909 and 2011 c 174 s 301 are each amended to  
36 read as follows:

37 (1) Upon every person who is an aluminum smelter engaging within  
38 this state in the business of manufacturing aluminum; as to such  
39 persons the amount of tax with respect to such business is, in the

1 case of manufacturers, equal to the value of the product  
2 manufactured, or in the case of processors for hire, equal to the  
3 gross income of the business, multiplied by the rate of .2904  
4 percent.

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

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

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

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

17 **Sec. 4.** RCW 82.04.4481 and 2011 c 174 s 302 are each amended to  
18 read as follows:

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

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

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

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

35 (5) A person claiming the credit provided in this section must  
36 file a complete annual report with the department under RCW  
37 82.32.534.

1       **Sec. 5.** RCW 82.08.805 and 2011 c 174 s 303 are each amended to  
2 read as follows:

3       (1) A person who has paid tax under RCW 82.08.020 for personal  
4 property used at an aluminum smelter, tangible personal property that  
5 will be incorporated as an ingredient or component of buildings or  
6 other structures at an aluminum smelter, or for labor and services  
7 rendered with respect to such buildings, structures, or personal  
8 property, is eligible for an exemption from the state share of the  
9 tax in the form of a credit, as provided in this section. A person  
10 claiming an exemption must pay the tax and may then take a credit  
11 equal to the state share of retail sales tax paid under RCW  
12 82.08.020. The person must submit information, in a form and manner  
13 prescribed by the department, specifying the amount of qualifying  
14 purchases or acquisitions for which the exemption is claimed and the  
15 amount of exempted tax.

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

18       (3) A person claiming the tax preference provided in this section  
19 must file a complete annual report with the department under RCW  
20 82.32.534.

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

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

26       **Sec. 6.** RCW 82.12.805 and 2011 c 174 s 305 are each amended to  
27 read as follows:

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

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

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

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

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

11 **Sec. 7.** RCW 82.12.022 and 2014 c 216 s 304 are each amended to  
12 read as follows:

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

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

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

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

32 (5)(a) The tax levied in this section does not apply to the use  
33 of natural or manufactured gas by an aluminum smelter as that term is  
34 defined in RCW 82.04.217 before January 1, 2017.

35 (b) A person claiming the exemption provided in this subsection  
36 (5) must file a complete annual report with the department under RCW  
37 82.32.534. A person who is required to repay tax preference amounts  
38 under section 2 of this act may not claim the exemption under this  
39 subsection (5) as provided in section 2 of this act.



1 (6) The tax imposed by this section does not apply to the use of  
2 natural gas, compressed natural gas, or liquefied natural gas, if the  
3 consumer uses the gas for transportation fuel as defined in RCW  
4 82.16.310.

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

7 (a) The person who sold the gas to the consumer when that tax is  
8 a gross receipts tax similar to that imposed pursuant to RCW  
9 82.16.020 by another state with respect to the gas for which a credit  
10 is sought under this subsection; or

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

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

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

22 (10) The department may adopt rules under chapter 34.05 RCW for  
23 the administration and enforcement of sections 1 through 6, chapter  
24 384, Laws of 1989.

25 **Sec. 8.** RCW 82.32.534 and 2014 c 97 s 102 are each amended to  
26 read as follows:

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

34 (b) The report must include information detailing employment,  
35 wages, and employer-provided health and retirement benefits for  
36 employment positions in Washington for the year that the tax  
37 preference was claimed. However, persons engaged in manufacturing  
38 commercial airplanes or components of such airplanes may report  
39 employment, wage, and benefit information per job at the

1 manufacturing site for the year that the tax preference was claimed.  
2 The report must not include names of employees. The report must also  
3 detail employment by the total number of full-time, part-time, and  
4 temporary positions for the year that the tax preference was claimed.

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

10 (d) For persons claiming the tax preferences under RCW  
11 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022(5), the  
12 report must include the amount of the tax preferences claimed in the  
13 calendar year covered by the report and must include a certified  
14 financial statement of profitability that has been prepared in  
15 accordance with generally accepted accounting principles. This  
16 subsection (1)(d) applies to reports filed for calendar year 2016 and  
17 thereafter.

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

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

26 (3) Other than information requested under subsection (2) of this  
27 section, the information contained in an annual report filed under  
28 this section is not subject to the confidentiality provisions of RCW  
29 82.32.330 and may be disclosed to the public upon request.

30 (4) Except as otherwise provided by law, if a person claims a tax  
31 preference that requires an annual report under this section but  
32 fails to submit a complete report by the due date or any extension  
33 under RCW 82.32.590, the department must declare the amount of the  
34 tax preference claimed for the previous calendar year to be  
35 immediately due and payable. The department must assess interest, but  
36 not penalties, on the amounts due under this subsection. The interest  
37 must be assessed at the rate provided for delinquent taxes under this  
38 chapter, retroactively to the date the tax preference was claimed,  
39 and accrues until the taxes for which the tax preference was claimed  
40 are repaid. Amounts due under this subsection are not subject to the

1 confidentiality provisions of RCW 82.32.330 and may be disclosed to  
2 the public upon request.

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

7 (6) For the purposes of this section:

8 (a) "Certified statement of profitability" means:

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

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

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

18 ~~((b))~~ (c) "Tax preference" has the meaning provided in RCW  
19 43.136.021 and includes only the tax preferences requiring a survey  
20 under this section.

21 NEW SECTION. Sec. 9. This act takes effect August 1, 2015.

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