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**SENATE BILL 5515**

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**State of Washington****65th Legislature****2017 Regular Session****By** Senator Warnick

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 a new section; providing an expiration date; and providing a  
7 contingent expiration date.

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 to produce silicon  
11 metal, which can be used in the production of photovoltaic cells for  
12 solar energy systems. The legislature further finds that energy is  
13 one of the largest costs for the smelting process and therefore  
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 counties, as  
9 defined in RCW 82.14.370(5).

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

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

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

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

27 (ii) The volume of solar grade silicon made in Washington  
28 compared to years prior to the effective date of this section;

29 (iii) Specifically assess the number of employment positions for  
30 each silicon smelter claiming or receiving the benefit of the  
31 preferences in sections 2 through 4 of this act, using data provided  
32 by the department of revenue;

33 (iv) Estimate the cost per job based on the amount of tax  
34 preferences taken by each silicon smelter;

35 (v) Estimate the number of solar energy systems, and the power  
36 output of those systems, that were likely produced using Washington  
37 state solar grade silicon based on the volume of silicon smelted in  
38 Washington at each silicon smelter utilizing the incentive; and

1 (vi) Determine, utilizing the finalized 2015 county wage data  
2 from the census of employment and wages as reported by the employment  
3 security department:

4 (A) The number of jobs at each eligible silicon smelter paying  
5 above the county average annual wage in the county in which the  
6 facility is located; and

7 (B) The proportion of jobs paying above the county average annual  
8 wage represented by the jobs provided by each eligible silicon  
9 smelter utilizing the incentive.

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

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

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

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

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

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

32 (5) For purposes of the annual survey required by RCW 82.32.585:

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

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

1 (6) The definitions in this subsection apply throughout this  
2 section unless the context clearly requires otherwise.

3 (a) "Silicon smelter" means a manufacturing facility that  
4 processes silica into solar grade silicon.

5 (b) "Solar grade silicon" means high-purity silicon used  
6 exclusively in components of solar energy systems using photovoltaic  
7 modules to capture direct sunlight. "Solar grade silicon" does not  
8 include silicon used in semiconductors.

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

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

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

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

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

27 (5) For purposes of the annual survey required by RCW 82.32.585:

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

31 (b) The person selling the electricity, natural gas, or  
32 manufactured gas to the silicon smelter is not required to file the  
33 annual survey.

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

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

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

5 (2) The tax must be levied and collected in an amount equal to  
6 the value of the article used by the taxpayer multiplied by the rate  
7 in effect for the public utility tax on gas distribution businesses  
8 under RCW 82.16.020. The "value of the article used" does not include  
9 any amounts that are paid for the hire or use of a gas distribution  
10 business as defined in RCW 82.16.010(2) in transporting the gas  
11 subject to tax under this subsection if those amounts are subject to  
12 tax under that chapter.

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

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

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

23 (b) A person claiming the exemption provided in this subsection  
24 (5) must file a complete annual report with the department under RCW  
25 82.32.534.

26 (6) The tax imposed by this section does not apply to the use of  
27 natural gas, compressed natural gas, or liquefied natural gas, if the  
28 consumer uses the gas for transportation fuel as defined in RCW  
29 82.16.310.

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

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

35 (a) The person who sold the gas to the consumer when that tax is  
36 a gross receipts tax similar to that imposed pursuant to RCW  
37 82.16.020 by another state with respect to the gas for which a credit  
38 is sought under this subsection; or

39 (b) The person consuming the gas upon which a use tax similar to  
40 the tax imposed by this section was paid to another state with

1 respect to the gas for which a credit is sought under this  
2 subsection.

3 ~~((+8))~~ (9) The use tax imposed in this section must be paid by  
4 the consumer to the department.

5 ~~((+9))~~ (10) There is imposed a reporting requirement on the  
6 person who delivered the gas to the consumer to make a quarterly  
7 report to the department. Such report must contain the volume of gas  
8 delivered, name of the consumer to whom delivered, and such other  
9 information as the department may require by rule.

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

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

15 (1)(a) A silicon smelter operated by a person required to submit  
16 an annual survey or report under sections 2 through 4 of this act  
17 must repay an amount equal to the entire economic benefit accruing to  
18 the person for the previous two calendar years due to the tax  
19 preferences under sections 2 through 4 of this act if:

20 (i) The average number of employment positions at a silicon  
21 smelter operated by the person is less than one hundred employment  
22 positions, as reported to the employment security department for the  
23 previous two calendar years; and

24 (ii) The average annual wage for all employment positions is  
25 equal to or less than the average annual wage for the county in which  
26 the silicon smelter operation is located for the previous two  
27 calendar years. The department must use the finalized 2015 county  
28 wage data from the census of employment and wages as reported by the  
29 employment security department.

30 (b) The department must make the determinations under (a)(i) and  
31 (ii) of this subsection (1) by August 31, 2023.

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

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

4 NEW SECTION. **Sec. 6.** (1)(a) Except as provided in (b) of this  
5 subsection, this act expires July 1, 2027.

6 (b) If a person must make repayment under section 5 of this act,  
7 this act expires January 1, 2024.

8 (2) If the contingent expiration date in subsection (1)(b) of  
9 this section occurs, the department of revenue must provide written  
10 notice of the expiration date of this act to affected parties, the  
11 chief clerk of the house of representatives, the secretary of the  
12 senate, the office of the code reviser, and others as deemed  
13 appropriate by the department.

14 (3) If the contingent expiration date in subsection (1)(b) of  
15 this section occurs, the joint legislative audit and review committee  
16 is not required to perform the evaluation required in section 1 of  
17 this act.

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