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SENATE BILL 5332

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State of Washington

65th Legislature

2017 Regular Session

By Senators Warnick, Takko, and Sheldon

1 AN ACT Relating to extending the expiration date of the public  
2 utility tax exemption for certain electrolytic processing businesses;  
3 amending RCW 82.16.0421; creating a new section; and providing an  
4 expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) This section is the tax preference  
7 performance statement for the tax preference contained in section 2  
8 of this act. This performance statement is only intended to be used  
9 for subsequent evaluation of the tax preference. It is not intended  
10 to create a private right of action by any party or be used to  
11 determine eligibility for preferential tax treatment.

12 (2) The legislature categorizes this tax preference as one  
13 intended to create or retain jobs and improve industry  
14 competitiveness as indicated in RCW 82.32.808(2) (b) and (c).

15 (3) It is the legislature's specific public policy objective to  
16 maintain the industry competitiveness of electrolytic processing  
17 businesses in Washington created under the existing tax exemption in  
18 RCW 82.16.0421 and thereby enable such businesses to continue to  
19 provide family-wage jobs in our state. The legislature recognizes  
20 that since 2004 when the public utility tax exemption in RCW  
21 82.16.0421 was initially enacted, electrolytic processing businesses

1 receiving the exemption have demonstrated the ability to successfully  
2 apply their tax savings towards maintaining competitiveness, while  
3 still providing family-wage jobs. Therefore, it is the legislature's  
4 intent to extend the expiration date of the existing public utility  
5 tax exemption under RCW 82.16.0421 for chlor-alkali electrolytic  
6 processing businesses and sodium chlorate electrolytic processing  
7 businesses in order to:

8 (a) Maintain industry competitiveness for such electrolytic  
9 processing businesses, who rely on electricity as a primary  
10 manufacturing input, in Washington by recognizing uncertain electric  
11 energy costs and offsetting tax advantages available to competing  
12 firms outside of Washington; and

13 (b) Retain existing family-wage jobs in Washington by enabling  
14 electrolytic processing businesses to maintain production of chlor-  
15 alkali and sodium chlorate at a level that preserves at least  
16 seventy-five percent of the jobs that were on the payroll of  
17 electrolytic processing businesses as of the date that the tax  
18 exemption was initially put in place, January 1, 2004.

19 (4) To measure the effectiveness of the tax preference provided  
20 in section 2 of this act in achieving the specific public policy  
21 objective described in subsection (3) of this section, the joint  
22 legislative audit and review committee must review the impact of the  
23 tax preference on maintaining jobs in electrolytic processing  
24 businesses in Washington. If the joint legislative audit and review  
25 committee finds, as a result of the new tax preference in section 2  
26 of this act, that jobs in chlor-alkali electrolytic processing  
27 businesses and sodium chlorate electrolytic processing businesses  
28 have been preserved at a level of at least seventy-five percent of  
29 the jobs that were on the payroll of such electrolytic processing  
30 businesses as of January 1, 2004, the legislature intends to extend  
31 the expiration date of the tax exemption in RCW 82.16.0421. If the  
32 joint legislative audit and review committee finds that the number of  
33 such electrolytic processing business jobs in Washington has been  
34 maintained at less than 2004 levels, then the joint legislative audit  
35 and review committee must make recommendations on how the tax  
36 preference can be improved to accomplish that legislative objective.

37 (5) In order to obtain the data necessary to perform the review  
38 in subsection (4) of this act, the joint legislative audit and review  
39 committee may refer to data provided to the department of revenue  
40 pursuant to annual reporting requirements under RCW 82.32.534.

1       **Sec. 2.** RCW 82.16.0421 and 2010 c 114 s 133 are each amended to  
2 read as follows:

3       (1) (~~For the purposes of this section:~~) The definitions in this  
4 subsection apply throughout this section unless the context clearly  
5 requires otherwise.

6       (a) "Chlor-alkali electrolytic processing business" means a  
7 person who is engaged in a business that uses more than ten average  
8 megawatts of electricity per month in a chlor-alkali electrolytic  
9 process to split the electrochemical bonds of sodium chloride and  
10 water to make chlorine and sodium hydroxide. A "chlor-alkali  
11 electrolytic processing business" does not include direct service  
12 industrial customers or their subsidiaries that contract for the  
13 purchase of power from the Bonneville power administration as of June  
14 10, 2004.

15       (b) "Sodium chlorate electrolytic processing business" means a  
16 person who is engaged in a business that uses more than ten average  
17 megawatts of electricity per month in a sodium chlorate electrolytic  
18 process to split the electrochemical bonds of sodium chloride and  
19 water to make sodium chlorate and hydrogen. A "sodium chlorate  
20 electrolytic processing business" does not include direct service  
21 industrial customers or their subsidiaries that contract for the  
22 purchase of power from the Bonneville power administration as of June  
23 10, 2004.

24       (2) Effective July 1, 2004, the tax levied under this chapter  
25 does not apply to sales of electricity made by a light and power  
26 business to a chlor-alkali electrolytic processing business or a  
27 sodium chlorate electrolytic processing business for the electrolytic  
28 process if the contract for sale of electricity to the business  
29 contains the following terms:

30       (a) The electricity to be used in the electrolytic process is  
31 separately metered from the electricity used for general operations  
32 of the business;

33       (b) The price charged for the electricity used in the  
34 electrolytic process will be reduced by an amount equal to the tax  
35 exemption available to the light and power business under this  
36 section; and

37       (c) Disallowance of all or part of the exemption under this  
38 section is a breach of contract and the damages to be paid by the  
39 chlor-alkali electrolytic processing business or the sodium chlorate

1 electrolytic processing business are the amount of the tax exemption  
2 disallowed.

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

6 (4) In order to claim an exemption under this section, the chlor-  
7 alkali electrolytic processing business or the sodium chlorate  
8 electrolytic processing business must provide the light and power  
9 business with an exemption certificate in a form and manner  
10 prescribed by the department.

11 (5) A person receiving the benefit of the exemption provided in  
12 this section must file a complete annual report with the department  
13 under RCW 82.32.534.

14 (6)(a) This section does not apply to sales of electricity made  
15 after December 31, (~~(2018)~~) 2028.

16 (b) This section expires (~~(June 30, 2019)~~) July 1, 2029.

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