
SENATE BILL 6107

State of Washington

66th Legislature

2020 Regular Session

By Senators O'Ban, Braun, Warnick, and Wilson, L.

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1 AN ACT Relating to exempting services essential to affordable
2 housing from the business and occupations surcharge; amending RCW
3 82.04.299; creating a new section; and providing an effective date.

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

5 **Sec. 1.** RCW 82.04.299 and 2019 c 406 s 74 are each amended to
6 read as follows:

7 The legislature intends to secure additional revenue via
8 surcharges targeted towards certain industries including select
9 advanced computing businesses.

10 The legislature intends the provisions of chapter 406, Laws of
11 2019 to be applied broadly in favor of application of the surcharges.
12 To achieve this intent, any provision within chapter 406, Laws of
13 2019 that is deemed to be ambiguous by a court of competent
14 jurisdiction, the board of tax appeals, or any other judicial or
15 administrative body, should be construed in favor of application of
16 the surcharges. The rule of statutory construction in favor of the
17 application of the surcharge under this paragraph does not apply on
18 or after January 1, 2022.

19 (1)(a) Beginning with business activities occurring on or after
20 January 1, 2020, in addition to the taxes imposed under RCW
21 82.04.290(2), a workforce education investment surcharge is imposed

1 on specified persons. The surcharge is equal to the total amount of
2 tax payable by the person on business activities taxed under RCW
3 82.04.290(2), before application of any tax credits, multiplied by
4 the rate of twenty percent.

5 (b) For specified persons who report under one or more tax
6 classifications, this surcharge applies only to business activities
7 taxed under RCW 82.04.290(2).

8 (c) The surcharge imposed under this subsection (1) must be
9 reported and paid in a manner and frequency as required by the
10 department.

11 (2) For the purposes of this section, "specified person" means a
12 person who is not subject to the surcharge under subsection (4) of
13 this section and who is primarily engaged within this state in any
14 combination of the following activities:

15 (a) Computer software publishing or publishing and reproduction.
16 Establishments in this industry carry out operations necessary for
17 producing and distributing computer software, such as designing,
18 providing documentation, assisting in installation, and providing
19 support services to software purchasers. These establishments may
20 design, develop, and publish, or publish only. These establishments
21 may publish and distribute software remotely through subscriptions
22 and downloads;

23 (b) Conducting original investigation undertaken on a systematic
24 basis to gain new knowledge or the application of research findings
25 or other scientific knowledge for the creation of new or
26 significantly improved products or processes. Techniques may include
27 modeling and simulation. The industries within this industry group
28 are defined on the basis of the domain of research and on scientific
29 expertise of the establishment;

30 (c) Putting capital at risk in the process of underwriting
31 securities issues or in making markets for securities and commodities
32 and those acting as agents or brokers between buyers and sellers of
33 securities and commodities, usually charging a commission;

34 (d) Providing expertise in the field of information technologies
35 through one or more of the following activities: (i) Writing,
36 modifying, testing, and supporting computer software to meet the
37 needs of a particular customer; (ii) planning and designing computer
38 systems that integrate computer hardware, computer software, and
39 communication technologies; (iii) on-site management and operation of
40 clients' computer systems and data processing facilities; or (iv)

1 other professional and technical computer-related advice and
2 services;

3 (e) Performing central banking functions, such as issuing
4 currency, managing the nation's money supply and international
5 reserves, holding deposits that represent the reserves of other banks
6 and other central banks, and acting as a fiscal agent for the central
7 government;

8 (f) (i) Purchasing access and network capacity from owners and
9 operators of telecommunications networks and reselling wired and
10 wireless telecommunications services, except satellite, to businesses
11 and households; (ii) providing specialized telecommunications
12 services, such as satellite tracking, communications telemetry, and
13 radar station operation; (iii) providing satellite terminal stations
14 and associated facilities connected with one or more terrestrial
15 systems and capable of transmitting telecommunications to, and
16 receiving telecommunications from, satellite systems; or (iv)
17 providing internet access services or voice over internet protocol
18 services via client-supplied telecommunications connections.
19 Establishments in this industry do not operate as telecommunications
20 carriers. Mobile virtual network operators are included in this
21 industry;

22 (g) (i) Acting as principals in buying or selling financial
23 contracts, except investment bankers, securities dealers, and
24 commodity contracts dealers; (ii) acting as agents or brokers, except
25 securities brokerages and commodity contracts brokerages, in buying
26 or selling financial contracts; or (iii) providing other investment
27 services except securities and commodity exchanges, such as portfolio
28 management, investment advice, and trust, fiduciary, and custody
29 services;

30 (h) Supplying information, such as news reports, articles,
31 pictures, and features, to the news media. This industry comprises
32 establishments primarily engaged in providing library or archive
33 services. These establishments are engaged in maintaining collections
34 of documents and facilitating the use of these documents as required
35 to meet the informational, research, educational, or recreational
36 needs of their user. These establishments may also acquire, research,
37 store, preserve, and generally make accessible to the public
38 historical documents, photographs, maps, audio material, audiovisual
39 material, and other archival material of historical interest. All or
40 portions of these collections may be accessible electronically. This

1 industry comprises establishments engaged in: (i) Publishing and
2 broadcasting content on the internet exclusively; or (ii) operating
3 web sites that use a search engine to generate and maintain extensive
4 databases of internet addresses and content in an easily searchable
5 format, known as web search portals. The publishing and broadcasting
6 establishments in this industry do not provide traditional versions
7 of the content they publish or broadcast. They provide textual,
8 audio, or video content of general or specific interest on the
9 internet exclusively. Establishments known as web search portals
10 often provide additional internet services, such as email,
11 connections to other web sites, auctions, news, and other limited
12 content, and serve as a home base for internet users. This industry
13 comprises establishments primarily engaged in providing other
14 information services, except news syndicates, libraries, archives,
15 internet publishing and broadcasting, and web search portals;

16 ~~((i))~~ ~~((Architectural, engineering, and related services, such as~~
17 ~~drafting services, building inspection services, geophysical~~
18 ~~surveying and mapping services, surveying and mapping, except~~
19 ~~geophysical services and testing services;~~

20 ~~((j))~~ Retailing all types of merchandise using nonstore means,
21 such as catalogs, toll-free telephone numbers, electronic media, such
22 as interactive television or the internet, or selling directly to
23 consumers in a nonretail, physical environment. Included in this
24 industry are establishments primarily engaged in retailing from
25 catalog showrooms of mail-order houses;

26 ~~((k))~~ (j) Providing advice and assistance to businesses and
27 other organizations on management, environmental, scientific, and
28 technical issues;

29 ~~((l))~~ (k) Providing infrastructure for hosting or data
30 processing services. These establishments may provide specialized
31 hosting activities, such as web hosting, streaming services, or
32 application hosting, or they may provide general time-share mainframe
33 facilities to clients. Data processing establishments provide
34 complete processing and specialized reports from data supplied by
35 clients or provide automated data processing and data entry services;

36 ~~((m))~~ (l) Facilitating credit intermediation by performing
37 activities, such as arranging loans by bringing borrowers and lenders
38 together and clearing checks and credit card transactions;

1 (~~(n)~~) (m) Offering legal services, such as those offered by
2 offices of lawyers, offices of notaries, and title abstract and
3 settlement offices, and paralegal services;

4 (~~(o)~~) (n) Operating or providing access to transmission
5 facilities and infrastructure that they own or lease for the
6 transmission of voice, data, text, sound, and video using wired
7 telecommunications networks. Transmission facilities may be based on
8 a single technology or a combination of technologies. Establishments
9 in this industry use the wired telecommunications network facilities
10 that they operate to provide a variety of services, such as wired
11 telephony services, including voice over internet protocol services,
12 wired audio and video programming distribution, and wired broadband
13 internet services. By exception, establishments providing satellite
14 television distribution services using facilities and infrastructure
15 that they operate are included in this industry;

16 (~~(p)~~) (o) Providing telecommunications services to other
17 establishments in the telecommunications and broadcasting industries
18 by forwarding and receiving communications signals via a system of
19 satellites or reselling satellite telecommunications;

20 (~~(q)~~) (p) Operating and maintaining switching and transmission
21 facilities to provide communications via the airwaves. Establishments
22 in this industry have spectrum licenses and provide services using
23 that spectrum, such as cellular phone services, paging services,
24 wireless internet access, and wireless video services;

25 (~~(r)~~) (q) Extending credit or lending funds raised by credit
26 market borrowing, such as issuing commercial paper or other debt
27 instruments or by borrowing from other financial intermediaries;

28 (~~(s)~~) (r) Underwriting annuities and insurance policies and
29 investing premiums to build up a portfolio of financial assets to be
30 used against future claims. Direct insurance carriers are
31 establishments that are primarily engaged in initially underwriting
32 and assuming the risk of annuities and insurance policies.
33 Reinsurance carriers are establishments that are primarily engaged in
34 assuming all or part of the risk associated with an existing
35 insurance policy originally underwritten by another insurance
36 carrier. Industries are defined in terms of the type of risk being
37 insured against, such as death, loss of employment because of age or
38 disability, or property damage. Contributions and premiums are set on
39 the basis of actuarial calculations of probable payouts based on risk

1 factors from experience tables and expected investment returns on
2 reserves;

3 ~~((t))~~ (s) Merchant wholesale distribution of photographic
4 equipment and supplies and office, computer, and computer peripheral
5 equipment and medical, dental, hospital, ophthalmic, and other
6 commercial and professional equipment and supplies;

7 ~~((u))~~ (t) Operating studios and facilities for the broadcasting
8 of programs on a subscription or fee basis. The broadcast programming
9 is typically narrowcast in nature. These establishments produce
10 programming in their own facilities or acquire programming from
11 external sources. The programming material is usually delivered to a
12 third party, such as cable systems or direct-to-home satellite
13 systems, for transmission to viewers;

14 ~~((v))~~ (u) Publishing newspapers, magazines, other periodicals,
15 books, directories and mailing lists, and other works, such as
16 calendars, greeting cards, and maps. These works are characterized by
17 the intellectual creativity required in their development and are
18 usually protected by copyright. Publishers distribute or arrange for
19 the distribution of these works. Publishing establishments may create
20 the works in-house, or contract for, purchase, or compile works that
21 were originally created by others. These works may be published in
22 one or more formats, such as print or electronic form, including
23 proprietary electronic networks. Establishments in this industry may
24 print, reproduce, or offer direct access to the works themselves or
25 may arrange with others to carry out such functions. Establishments
26 that both print and publish may fill excess capacity with commercial
27 or job printing. However, the publishing activity is still considered
28 to be the primary activity of these establishments;

29 ~~((w))~~ (v) Generating, transmitting, or distributing electric
30 power. Establishments in this industry group may perform one or more
31 of the following activities: (i) Operate generation facilities that
32 produce electric energy; (ii) operate transmission systems that
33 convey the electricity from the generation facility to the
34 distribution system; or (iii) operate distribution systems that
35 convey electric power received from the generation facility or the
36 transmission system to the final consumer;

37 ~~((x))~~ (w) Providing specialized design services including
38 interior design, industrial design, graphic design, and others, but
39 not including architectural, engineering, and computer systems
40 design;

1 ~~((y))~~ (x) Assigning rights to assets, such as patents,
2 trademarks, brand names, or franchise agreements, for which a royalty
3 payment or licensing fee is paid to the asset holder;

4 ~~((z))~~ (y) Acting as agents in selling annuities and insurance
5 policies or providing other employee benefits and insurance related
6 services, such as claims adjustment and third-party administration;

7 ~~((aa))~~ (z) Business-to-business electronic markets that bring
8 together buyers and sellers of goods using the internet or other
9 electronic means and generally receive a commission or fee for the
10 service. Business-to-business electronic markets for durable and
11 nondurable goods are included in this industry. This industry
12 comprises wholesale trade agents and brokers acting on behalf of
13 buyers or sellers in the wholesale distribution of goods. Agents and
14 brokers do not take title to the goods being sold but rather receive
15 a commission or fee for their service. Agents and brokers for all
16 durable and nondurable goods are included in this industry;

17 ~~((bb))~~ (aa) Accepting deposits or share deposits and in lending
18 funds from these deposits. Within this group, industries are defined
19 on the basis of differences in the types of deposit liabilities
20 assumed and in the nature of the credit extended;

21 ~~((ee))~~ (bb) (i) Manufacturing complete aircraft, missiles, or
22 space vehicles; (ii) manufacturing aerospace engines, propulsion
23 units, auxiliary equipment or parts; (iii) developing and making
24 prototypes of aerospace products; (iv) aircraft conversion; or (v)
25 complete aircraft or propulsion systems overhaul and rebuilding;

26 ~~((dd))~~ (cc) Advertising, public relations, and related
27 services, such as media buying, independent media representation,
28 outdoor advertising, direct mail advertising, advertising material
29 distribution services, and other services related to advertising;

30 ~~((ee))~~ (dd) Providing services, such as auditing of accounting
31 records, designing accounting systems, preparing financial
32 statements, developing budgets, preparing tax returns, processing
33 payrolls, bookkeeping, and billing;

34 ~~((ff))~~ (ee) The independent practice of general or specialized
35 medicine or surgery by businesses comprised of one or more health
36 practitioners having the degree of doctor of medicine or doctor of
37 osteopathy. These practitioners operate private or group practices in
38 their own offices or in the facilities of others, such as hospitals
39 or health maintenance organization medical centers;

1 (~~(gg)~~) (ff) Providing a range of outpatient services, such as
2 family planning, diagnosis and treatment of mental health disorders
3 and alcohol and other substance abuse, and other general or
4 specialized outpatient care by businesses with medical staff;

5 (~~(hh)~~) (gg) Pooling securities or other assets, except
6 insurance and employee benefit funds, on behalf of shareholders, unit
7 holders, or beneficiaries, by legal entities such as investment pools
8 or funds;

9 (~~(ii)~~) (hh) Promoting the interests of an organization's
10 members, except religious organizations, social advocacy
11 organizations, and civic and social organizations. Examples of
12 establishments in this industry are business associations,
13 professional organizations, labor unions, and political
14 organizations;

15 (~~(jj)~~) (ii) Holding the securities of or other equity interests
16 in companies and enterprises for the purpose of owning a controlling
17 interest or influencing management decisions or businesses that
18 administer, oversee, and manage other establishments of the company
19 or enterprise and that normally undertake the strategic or
20 organizational planning and decision-making role of the company or
21 enterprise. Establishments that administer, oversee, and manage may
22 hold the securities of the company or enterprise;

23 (~~(kk)~~) (jj) For medical and diagnostic laboratories, providing
24 analytic or diagnostic services, including body fluid analysis and
25 diagnostic imaging, generally to the medical profession or to the
26 patient on referral from a health practitioner;

27 (~~(ll)~~) (kk) Serving as offices of chief executives and their
28 advisory committees and commissions. This industry includes offices
29 of the president, governors, and mayors, in addition to executive
30 advisory commissions. This industry comprises government
31 establishments serving as legislative bodies and their advisory
32 committees and commissions. Included in this industry are legislative
33 bodies, such as congress, state legislatures, and advisory and study
34 legislative commissions. This industry comprises government
35 establishments primarily engaged in public finance, taxation, and
36 monetary policy. Included are financial administration activities,
37 such as monetary policy, tax administration and collection, custody
38 and disbursement of funds, debt and investment administration,
39 auditing activities, and government employee retirement trust fund
40 administration. This industry comprises government establishments

1 serving as councils and boards of commissioners or supervisors and
2 such bodies where the chief executive is a member of the legislative
3 body itself. This industry comprises American Indian and Alaska
4 Native governing bodies. Establishments in this industry perform
5 legislative, judicial, and administrative functions for their
6 American Indian and Alaska Native lands. Included in this industry
7 are American Indian and Alaska Native councils, courts, and law
8 enforcement bodies. This industry comprises government establishments
9 primarily engaged in providing general support for government. Such
10 support services include personnel services, election boards, and
11 other general government support establishments that are not
12 classified elsewhere in public administration;

13 ~~((mm))~~ (ll) Providing a range of office administrative
14 services, such as financial planning, billing and recordkeeping,
15 personnel, and physical distribution and logistics, for others on a
16 contract or fee basis. These establishments do not provide operating
17 staff to carry out the complete operations of a business;

18 ~~((nn))~~ (mm) Providing professional, scientific, or technical
19 services including marketing research, public opinion polling,
20 photographic services, translation and interpretation services, and
21 veterinary services. This category does not include legal services,
22 accounting, tax preparation, bookkeeping, architectural, engineering,
23 and related services, specialized design services, computer systems
24 design, management, scientific and technical consulting services,
25 scientific research and development services, or advertising
26 services;

27 ~~((oo))~~ (nn) The independent practice of general or specialized
28 dentistry or dental surgery by businesses comprised of one or more
29 health practitioners having the degree of doctor of dental medicine,
30 doctor of dental surgery, or doctor of dental science. These
31 practitioners operate private or group practices in their own offices
32 or in the facilities of others, such as hospitals or health
33 maintenance organization medical centers. They may provide either
34 comprehensive preventive, cosmetic, or emergency care, or specialize
35 in a single field of dentistry;

36 ~~((pp))~~ (oo) The independent practice of general or specialized
37 medicine or surgery, or general or specialized dentistry or dental
38 surgery, by businesses comprised of one or more independent health
39 practitioners, other than physicians and dentists;

40 ~~((qq))~~ (pp) Providing ambulatory health care services.

1 (3) (a) (i) For the purposes of this section, a person is primarily
2 engaged within this state in any combination of the activities
3 described in subsection (2) of this section if more than fifty
4 percent of the person's cumulative gross amount reportable under this
5 chapter during the entire current or immediately preceding calendar
6 year was generated from engaging in any one or more of the activities
7 described in subsection (2) of this section. For purposes of this
8 subsection, "gross amount reportable" means the total value of
9 products, gross proceeds of sales, and gross income of the business,
10 reportable to the department before application of any tax
11 deductions.

12 (ii) If a person was not primarily engaged within this state in
13 any combination of the activities described in subsection (2) of this
14 section during the immediately preceding year, and the person is
15 unsure whether the person will be subject to the workforce investment
16 surcharge for the current calendar year until the close of the
17 current calendar year, the person must, if necessary, file corrected
18 returns with the department of revenue to pay any additional tax due
19 under this section for the current calendar year. Payment of
20 additional tax, along with corrected returns, is due and payable when
21 the person's last return for the calendar year during which the tax
22 liability accrued is due and payable. Additional tax due under this
23 section is subject to penalties and interest as provided under
24 chapter 82.32 RCW only if the tax is not paid in full by the date due
25 as provided in this subsection (3) (a) (ii).

26 (b) The entire amount of gross income of the business received by
27 a person pursuant to a contract under which the person is obligated
28 to perform any activity described under subsection (2) of this
29 section is deemed to be generated from engaging in any one or more of
30 the activities described in subsection (2) of this section.

31 (4) (a) Beginning with business activities occurring on or after
32 January 1, 2020, in addition to the taxes imposed under RCW
33 82.04.290(2), a workforce education investment surcharge is imposed
34 on select advanced computing businesses as follows:

35 (i) For an affiliated group that has worldwide gross revenue of
36 more than twenty-five billion dollars, but not more than one hundred
37 billion dollars, during the entire current or immediately preceding
38 calendar year, the surcharge is equal to the total amount of tax
39 payable by each member of the affiliated group on all business
40 activities taxed under RCW 82.04.290(2), before application of any

1 tax credits, multiplied by the rate of thirty-three and one-third
2 percent.

3 (ii) For an affiliated group that has worldwide gross revenue of
4 more than one hundred billion dollars during the entire current or
5 immediately preceding calendar year, the surcharge is equal to the
6 total amount of tax payable by each member of the affiliated group on
7 all business activities taxed under RCW 82.04.290(2), before
8 application of any tax credits, multiplied by the rate of sixty-six
9 and two-thirds percent.

10 (b) In no case will the combined surcharge imposed under this
11 subsection (4) paid by all members of an affiliated group be less
12 than four million dollars or more than seven million dollars
13 annually.

14 (c) For persons subject to the surcharge imposed under this
15 subsection (4) that report under one or more tax classifications, the
16 surcharge applies only to business activities taxed under RCW
17 82.04.290(2).

18 (d) The surcharge imposed under this subsection (4) must be
19 reported and paid in a manner and frequency as required by the
20 department.

21 (e) To aid in the effective administration of the surcharge in
22 this subsection (4), the department may require persons believed to
23 be engaging in advanced computing or affiliated with a person
24 believed to be engaging in advanced computing to disclose whether
25 they are a member of an affiliated group and, if so, to identify all
26 other members of the affiliated group subject to the surcharge. If
27 the department determines that a person, with intent to evade the
28 surcharge under this subsection (4), failed to fully comply with this
29 subsection (4)(e), the seven million dollar limitation in (b) of this
30 subsection (4) does not apply to the person's affiliated group.

31 (f) For the purposes of this subsection (4) the following
32 definitions apply:

33 (i) "Advanced computing" means designing or developing computer
34 software or computer hardware, whether directly or contracting with
35 another person, including modifications to computer software or
36 computer hardware, cloud computing services, or operating an online
37 marketplace, an online search engine, or online social networking
38 platform;

1 (ii) "Affiliate" and "affiliated" means a person that directly or
2 indirectly, through one or more intermediaries, controls, is
3 controlled by, or is under common control with another person;

4 (iii) "Affiliated group" means a group of two or more persons
5 that are affiliated with each other;

6 (iv) "Cloud computing services" means on-demand delivery of
7 computing resources, such as networks, servers, storage,
8 applications, and services, over the internet;

9 (v) "Control" means the possession, directly or indirectly, of
10 more than fifty percent of the power to direct or cause the direction
11 of the management and policies of a person, whether through the
12 ownership of voting shares, by contract, or otherwise; and

13 (vi) "Select advanced computing business" means a person who is a
14 member of an affiliated group with at least one member of the
15 affiliated group engaging in the business of advanced computing, and
16 the affiliated group has worldwide gross revenue of more than twenty-
17 five billion dollars during the entire current or immediately
18 preceding calendar year. A person who is primarily engaged within
19 this state in the provision of commercial mobile service, as that
20 term is defined in 47 U.S.C. Sec. 332(d)(1), shall not be considered
21 a select advanced computing business. A person who is primarily
22 engaged in this state in the operation and provision of access to
23 transmission facilities and infrastructure that the person owns or
24 leases for the transmission of voice, data, text, sound, and video
25 using wired telecommunications networks shall not be considered a
26 select advanced computing business.

27 (5) The workforce education investment surcharges under this
28 section do not apply to any hospital as defined in RCW 70.41.020,
29 including any hospital that comes within the scope of chapter 71.12
30 RCW if the hospital is also licensed under chapter 70.41 RCW.

31 (6) Revenues from the surcharges under this section must be
32 deposited directly into the workforce education investment account
33 established in RCW 43.79.195.

34 (7) The department has the authority to determine through an
35 audit or other investigation whether a person is subject to the
36 surcharges imposed in this section. The department's determination
37 that a person is subject to the surcharge is presumed to be correct
38 unless the person shows by clear, cogent, and convincing evidence
39 that the department's determination was incorrect. The increased

1 evidentiary standard under this subsection (7) does not apply after
2 January 1, 2022.

3 NEW SECTION. **Sec. 2.** The provisions of RCW 82.32.805 and
4 82.32.808 do not apply to this act.

5 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2020.

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