
HOUSE BILL 2391

State of Washington

66th Legislature

2020 Regular Session

By Representatives Young and Ybarra

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1 AN ACT Relating to providing certain businesses engaged in
2 affordable housing projects an exemption from the workforce education
3 investment surcharge; amending RCW 82.04.299; and providing an
4 effective date.

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

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

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

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

20 (1)(a) Beginning with business activities occurring on or after
21 January 1, 2020, in addition to the taxes imposed under RCW

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

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

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

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

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

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

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

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

1 clients' computer systems and data processing facilities; or (iv)
2 other professional and technical computer-related advice and
3 services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (x) Providing specialized design services including interior
36 design, industrial design, graphic design, and others, but not
37 including architectural, engineering, and computer systems design;

38 (y) Assigning rights to assets, such as patents, trademarks,
39 brand names, or franchise agreements, for which a royalty payment or
40 licensing fee is paid to the asset holder;

1 (z) Acting as agents in selling annuities and insurance policies
2 or providing other employee benefits and insurance related services,
3 such as claims adjustment and third-party administration;

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

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

18 (cc)(i) Manufacturing complete aircraft, missiles, or space
19 vehicles; (ii) manufacturing aerospace engines, propulsion units,
20 auxiliary equipment or parts; (iii) developing and making prototypes
21 of aerospace products; (iv) aircraft conversion; or (v) complete
22 aircraft or propulsion systems overhaul and rebuilding;

23 (dd) Advertising, public relations, and related services, such as
24 media buying, independent media representation, outdoor advertising,
25 direct mail advertising, advertising material distribution services,
26 and other services related to advertising;

27 (ee) Providing services, such as auditing of accounting records,
28 designing accounting systems, preparing financial statements,
29 developing budgets, preparing tax returns, processing payrolls,
30 bookkeeping, and billing;

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

37 (gg) Providing a range of outpatient services, such as family
38 planning, diagnosis and treatment of mental health disorders and
39 alcohol and other substance abuse, and other general or specialized
40 outpatient care by businesses with medical staff;

1 (hh) Pooling securities or other assets, except insurance and
2 employee benefit funds, on behalf of shareholders, unit holders, or
3 beneficiaries, by legal entities such as investment pools or funds;

4 (ii) Promoting the interests of an organization's members, except
5 religious organizations, social advocacy organizations, and civic and
6 social organizations. Examples of establishments in this industry are
7 business associations, professional organizations, labor unions, and
8 political organizations;

9 (jj) Holding the securities of or other equity interests in
10 companies and enterprises for the purpose of owning a controlling
11 interest or influencing management decisions or businesses that
12 administer, oversee, and manage other establishments of the company
13 or enterprise and that normally undertake the strategic or
14 organizational planning and decision-making role of the company or
15 enterprise. Establishments that administer, oversee, and manage may
16 hold the securities of the company or enterprise;

17 (kk) For medical and diagnostic laboratories, providing analytic
18 or diagnostic services, including body fluid analysis and diagnostic
19 imaging, generally to the medical profession or to the patient on
20 referral from a health practitioner;

21 (ll) Serving as offices of chief executives and their advisory
22 committees and commissions. This industry includes offices of the
23 president, governors, and mayors, in addition to executive advisory
24 commissions. This industry comprises government establishments
25 serving as legislative bodies and their advisory committees and
26 commissions. Included in this industry are legislative bodies, such
27 as congress, state legislatures, and advisory and study legislative
28 commissions. This industry comprises government establishments
29 primarily engaged in public finance, taxation, and monetary policy.
30 Included are financial administration activities, such as monetary
31 policy, tax administration and collection, custody and disbursement
32 of funds, debt and investment administration, auditing activities,
33 and government employee retirement trust fund administration. This
34 industry comprises government establishments serving as councils and
35 boards of commissioners or supervisors and such bodies where the
36 chief executive is a member of the legislative body itself. This
37 industry comprises American Indian and Alaska Native governing
38 bodies. Establishments in this industry perform legislative,
39 judicial, and administrative functions for their American Indian and
40 Alaska Native lands. Included in this industry are American Indian

1 and Alaska Native councils, courts, and law enforcement bodies. This
2 industry comprises government establishments primarily engaged in
3 providing general support for government. Such support services
4 include personnel services, election boards, and other general
5 government support establishments that are not classified elsewhere
6 in public administration;

7 (mm) Providing a range of office administrative services, such as
8 financial planning, billing and recordkeeping, personnel, and
9 physical distribution and logistics, for others on a contract or fee
10 basis. These establishments do not provide operating staff to carry
11 out the complete operations of a business;

12 (nn) Providing professional, scientific, or technical services
13 including marketing research, public opinion polling, photographic
14 services, translation and interpretation services, and veterinary
15 services. This category does not include legal services, accounting,
16 tax preparation, bookkeeping, architectural, engineering, and related
17 services, specialized design services, computer systems design,
18 management, scientific and technical consulting services, scientific
19 research and development services, or advertising services;

20 (oo) The independent practice of general or specialized dentistry
21 or dental surgery by businesses comprised of one or more health
22 practitioners having the degree of doctor of dental medicine, doctor
23 of dental surgery, or doctor of dental science. These practitioners
24 operate private or group practices in their own offices or in the
25 facilities of others, such as hospitals or health maintenance
26 organization medical centers. They may provide either comprehensive
27 preventive, cosmetic, or emergency care, or specialize in a single
28 field of dentistry;

29 (pp) The independent practice of general or specialized medicine
30 or surgery, or general or specialized dentistry or dental surgery, by
31 businesses comprised of one or more independent health practitioners,
32 other than physicians and dentists;

33 (qq) Providing ambulatory health care services.

34 (3) (a) (i) For the purposes of this section, a person is primarily
35 engaged within this state in any combination of the activities
36 described in subsection (2) of this section if more than fifty
37 percent of the person's cumulative gross amount reportable under this
38 chapter during the entire current or immediately preceding calendar
39 year was generated from engaging in any one or more of the activities
40 described in subsection (2) of this section. For purposes of this

1 subsection, "gross amount reportable" means the total value of
2 products, gross proceeds of sales, and gross income of the business,
3 reportable to the department before application of any tax
4 deductions.

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

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

24 (4)(a) Beginning with business activities occurring on or after
25 January 1, 2020, in addition to the taxes imposed under RCW
26 82.04.290(2), a workforce education investment surcharge is imposed
27 on select advanced computing businesses as follows:

28 (i) For an affiliated group that has worldwide gross revenue of
29 more than twenty-five billion dollars, but not more than one hundred
30 billion dollars, during the entire current or immediately preceding
31 calendar year, the surcharge is equal to the total amount of tax
32 payable by each member of the affiliated group on all business
33 activities taxed under RCW 82.04.290(2), before application of any
34 tax credits, multiplied by the rate of thirty-three and one-third
35 percent.

36 (ii) For an affiliated group that has worldwide gross revenue of
37 more than one hundred billion dollars during the entire current or
38 immediately preceding calendar year, the surcharge is equal to the
39 total amount of tax payable by each member of the affiliated group on
40 all business activities taxed under RCW 82.04.290(2), before

1 application of any tax credits, multiplied by the rate of sixty-six
2 and two-thirds percent.

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

7 (c) For persons subject to the surcharge imposed under this
8 subsection (4) that report under one or more tax classifications, the
9 surcharge applies only to business activities taxed under RCW
10 82.04.290(2).

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

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

24 (f) For the purposes of this subsection (4) the following
25 definitions apply:

26 (i) "Advanced computing" means designing or developing computer
27 software or computer hardware, whether directly or contracting with
28 another person, including modifications to computer software or
29 computer hardware, cloud computing services, or operating an online
30 marketplace, an online search engine, or online social networking
31 platform;

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

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

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

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

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

19 (5) The workforce education investment surcharges under this
20 section do not apply to ~~((any))~~:

21 (a) Any hospital as defined in RCW 70.41.020, including any
22 hospital that comes within the scope of chapter 71.12 RCW if the
23 hospital is also licensed under chapter 70.41 RCW; and

24 (b) A person primarily engaged in business activities under
25 subsection (2)(i) of this section if the person was contracted for
26 those business activities for work on at least one affordable housing
27 project during the relevant tax year.

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

31 (7) The department has the authority to determine through an
32 audit or other investigation whether a person is subject to the
33 surcharges imposed in this section. The department's determination
34 that a person is subject to the surcharge is presumed to be correct
35 unless the person shows by clear, cogent, and convincing evidence
36 that the department's determination was incorrect. The increased
37 evidentiary standard under this subsection (7) does not apply after
38 January 1, 2022.

1 NEW SECTION. **Sec. 2.** This act takes effect July 1, 2020.

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