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**SUBSTITUTE HOUSE BILL 2907**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Finance (originally sponsored by Representatives Macri, Springer, Fitzgibbon, Frame, Pollet, Cody, Chopp, Tarleton, Slatter, Doglio, Hudgins, Senn, Gregerson, Bergquist, Duerr, J. Johnson, and Santos)

AN ACT Relating to providing progressive tax reform by authorizing counties with populations exceeding two million to impose an excise tax on businesses in order to reduce homelessness, save lives, and improve public safety; amending RCW 48.14.080; adding a new chapter to Title 83 RCW; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that more than twenty-two thousand five hundred households experienced homelessness in 2018 in King county alone. In addition, over the past ten years, King county has lost more than one hundred twelve thousand units, over forty percent, of the housing affordable to those living below eighty percent of area median income. Only one-third of medicaid enrollees in King county and statewide with an identified need for substance use disorder treatment receive treatment, and only one-half of those needing mental health treatment receive treatment. The legislature further finds that the crisis of homelessness and lack of affordable housing is growing in our communities. To combat this crisis, the legislature finds there is need for a comprehensive approach that provides shelter and services for those experiencing homelessness, increases the supply of affordable housing, addresses public safety challenges, and increases access to behavioral health services.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Business" has the meaning provided in RCW 82.04.140. Depending on the context, "business" may also mean an employer engaging in business in the county.

(2)(a) "Compensation" means remuneration as that term is defined in RCW 50A.05.010, net distributions, incentive payments, including guaranteed payments, whether based on profit or otherwise, earned for services rendered or work performed, whether paid directly or through an agent, and whether in cash or in property or the right to receive property.

(b) "Compensation" does not include payments to an owner of a pass-through entity that is not earned for services rendered or work performed, such as return of capital, investment income, or other income from passive activities.

(3) "County" means a county with a population of at least two million organized under the laws of the state of Washington and includes the entire county, including the incorporated and unincorporated areas.

(4)(a) "Employee" has the meaning provided in RCW 50A.05.010.

(b) "Employee" also includes individuals who are:

(i) Members of limited liability companies;

(ii) Members of professional limited liability companies;

(iii) Partners;

(iv) Other owners of pass-through entities; and

(v) Sole proprietors.

(5) "Employer" has the meaning provided in RCW 50A.05.010.

(6)(a) "Employment" has the meaning provided in RCW 50A.05.010.

(b) "Employment" also includes self-employed individuals.

(7) "Engaging in business" has the meaning provided in RCW 82.04.150.

(8) "Grocery business" means:

(a) A business whose primary business is making retail sales of food and food ingredients to consumers that are exempt from the retail sales tax under RCW 82.08.0293; or

(b) A business whose primary business is making wholesale sales of food and food ingredients that will be exempt from the retail sales tax under RCW 82.08.0293 when resold by the purchaser. For purposes of this subsection, "primary business" means that seventy-five percent of the gross income of the business for purposes of calculating the state business and occupation tax under chapter 82.04 RCW is attributable to that business activity.

(9) "Grocery worker" means an individual employed at a grocery business whose primary duties:

(a) Include: (i) The selling, stocking, or handling of food and food ingredients that, when sold at retail, are exempt from the retail sales tax under RCW 82.08.0293; or (ii) providing janitorial services to the grocery business; or

(b) Consist of directly supervising the individuals described in (a) of this subsection.

(10) "Local government entity" has the meaning provided in RCW 4.96.010.

(11) "Net distribution" means the draws from net income by any owner of a pass-through entity. Taxable distributions are limited by the amount of draws or net income for that owner, whichever is less. If the owner's draw exceeds that individual's net profit, the excess draw is a return of capital. A return of capital is not taxable because it is a liquidation of an owner's assets.

(12) "Pass-through entity" includes a trust, partnership, corporation described in subchapter S of the internal revenue code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity which is not subject to the income tax imposed by subtitle A, chapter 1 of the internal revenue code of 1986, as amended, or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity.

(13) "Payroll expense" means the compensation paid to employees who, during any tax year, perform work or render any services in the county.

(14) "Person" has the meaning provided in RCW 82.04.030.

(15) "Small business" means any business: (a) With fifty employees or less; and (b) that pays an annual compensation and remuneration of at most one hundred fifty thousand dollars, as adjusted under section 4 of this act, for at least fifty percent of its employees.

(16) "Tax year" means a twelve-month period from January 1st to December 31st.

(17) "Taxpayer" means any employer who engages in any business in the county or who performs any act for which a tax is imposed under this chapter.

NEW SECTION. **Sec.**  (1) Subject to this chapter, a county may, by ordinance enacted by its county legislative authority, impose an annual payroll expense tax on employers engaging in business in the county. The tax imposed by this chapter is levied on employers. The employer is responsible for paying the tax required under this chapter, and the employer may not make any deductions from the employees' compensation to pay for this tax.

(2)(a) The tax is measured by the employer's payroll expense for the tax year attributable to work performed or services rendered by the employer's employees in the county, subject to deductions authorized under subsection (3) of this section, multiplied by a rate of not more than two-tenths of one percent, but not less than one-tenth of one percent.

(b) The tax rates must be the same for all businesses subject to the tax, except the county may impose graduated tax rates that increase based on employee compensation.

(3) Taxpayers may deduct the following from the measure of the tax, as adjusted under section 4 of this act:

(a) The payroll expense attributable to any employee with annual compensation that is less than one hundred fifty thousand dollars; and

(b) The payroll expense attributable to any employee who is employed as a grocery worker.

(4)(a) The following are exempt from the payroll expense tax authorized by this chapter:

(i) Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080;

(ii) Businesses that only sell, manufacture, or distribute liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120;

(iii) Federal and state government agencies and subdivisions, and any local governmental entity;

(iv) Other businesses that a county may not tax based on federal or state law;

(v) A small business; and

(vi) A comprehensive cancer center as defined in RCW 82.04.4265.

(b) The county may also grant an employer a one-year exemption from the tax due to extreme financial hardship.

(5) A county imposing the tax under this section may not enact any exemptions, deductions, or credits not authorized by this chapter.

(6) Nothing in this chapter shall be construed as requiring the payment of any tax for engaging in business when such payment would be in violation of any federal or state law. If imposition of the county's tax would place an undue burden upon interstate commerce or violate other constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the county's tax, and still apply the county's tax to as much of the taxpayer's activities as may be subject to the county's taxing authority.

(7) Temporary employment agencies that supply temporary employees to businesses engaging in business within the county, and pay the temporary employee's compensation, shall report and pay the tax on all such temporary employees. Businesses engaging temporary employees who are on the business' payroll shall report and pay the tax on the payroll expense of such temporary employees, whether or not they are from an employment agency.

(8) The county may impose the tax authorized by this chapter on insurers and their appointed insurance producers and all other persons engaged in the business of making contracts of insurance.

NEW SECTION. **Sec.**  Beginning on January 1, 2021, and on January 1st of every year thereafter, the county must adjust the amounts in section 3(3) of this act and the dollar threshold used to define small business in section 2(15) of this act as follows:

(1) The amounts shall increase commensurate with the rate of growth of the prior year's June-to-June consumer price index (CPI-U) for the Seattle-Tacoma-Bellevue area as published by the United States department of labor;

(2) If the annual change in the CPI-U is negative, no adjustment to the amounts must be made; and

(3) The amounts calculated must be rounded to the nearest whole dollar.

NEW SECTION. **Sec.**  (1) A county may enact ordinances, or rely on existing laws, to implement any measures it deems necessary to facilitate:

(a) The imposition, collection, and administration of the tax authorized by this chapter, including measures to govern the timing, form, content, and filing of returns;

(b) The allocation and apportionment of payroll expense;

(c) Recordkeeping;

(d) Audits;

(e) Assessments;

(f) Appeals;

(g) Refunds;

(h) The adoption of administrative rules;

(i) Enforcement and remedies; and

(j) The imposition of interest and penalties.

(2) A county may enter into an interlocal agreement with a city or state agency for the administration and collection of the tax authorized by this chapter. The agreement shall allow for full cost recovery and require the same confidentiality protections as established in section 6 of this act.

NEW SECTION. **Sec.**  A county imposing the tax shall, by ordinance, provide that return and tax information are confidential, privileged, and only subject to disclosure in the manner provided by RCW 82.32.330.

NEW SECTION. **Sec.**  (1) A county imposing the tax authorized under this chapter may use the money collected to cover the necessary costs of tax administration, including recovery of amounts used to initially set up the administration system. Remaining money or bonds issued under this chapter may only be used for the following purposes:

(a)(i) Acquire, rehabilitate, or construct affordable housing, which may include units of affordable housing within an existing structure or facilities providing supportive housing services under RCW 71.24.385;

(ii) Fund the operations and maintenance costs of units of affordable or supportive housing including services in supportive housing; and

(iii) Provide rental assistance to low-income individuals and families;

(b) Provide for housing, shelter, and evidence-based interventions that address and prevent homelessness, which uses shall prioritize serving youth and young adults while also serving families and adults, including but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance;

(c) Acquire, construct, start up, or operate community-based behavioral health-related facilities including, but not limited to, facilities serving people who meet or are at risk of meeting involuntary behavioral health commitment criteria under chapter 71.05 or 71.34 RCW; and

(d) Support operations or services that improve public safety by providing supportive services to persons with behavioral health conditions with frequent criminal justice system involvement.

(2) To carry out this section including financing loans or grants to nonprofit organizations or public housing authorities, the legislative authority of the county imposing the tax and the legislative authority of the city receiving a share of the tax proceeds may issue general obligation or revenue bonds within the limitations prescribed by state law, and may use and pledge the money collected under this section for repayment of the bonds.

(3)(a) The housing, services, and rental assistance provided under subsection (1)(a) of this section may only be provided to persons whose income is at or below eighty percent of the median income of the county providing the assistance. At least fifty percent of these funds must be provided to persons whose income is at or below thirty percent of the median income of the county providing the assistance.

(b) Over a five-year period, the distributions made under subsection (1) of this section must provide at least fifty percent of the total funds to purposes authorized under subsection (1)(a) of this section and no more than ten percent of the total funds to purposes authorized under subsection (1)(d) of this section.

(4)(a) The county and city receiving revenue from the tax imposed under this chapter must each designate a committee to act as an advisory and accountability commission. The commission must include representatives from cities and state elected officials from each subregion of the county. For the county and city respectively, the commissions must:

(i) Advise on spending plans developed by the city and county proposing the allocation of money provided by the tax;

(ii) Advise on measures to evaluate the effectiveness of allocations, including providing recommendations for corrective actions that may be needed if established measures are not being met;

(iii) Monitor the use of the funds to ensure it remains consistent with the uses of this section; and

(iv) Receive biannual reports on the programs, services, projects, measures, and outcomes funded by the tax.

(b) The membership of each advisory and accountability commission must consist of one-half members who represent employers paying the tax of which one-half must include members who represent the highest ten percent of taxpayers. The membership must also include members who represent persons or communities served by the tax.

(5) Beginning December 1, 2025, and every five years thereafter, the county and city shall provide an implementation report to the appropriate committees of the legislature.

(6) The county and city shall ensure a performance audit is conducted no later than five years after the date the tax is imposed and periodically thereafter.

NEW SECTION. **Sec.**  The county shall disburse the revenue collected from the tax authorized by this section as follows:

(1) The funds allocated in section 7(1) (a), (c), and (d) of this act must be split such that forty-three percent of the revenue is provided to the city with the highest population of people experiencing homelessness. The county shall work with the other cities and regional housing partnerships created under an interlocal agreement to distribute the remaining fifty-seven percent of the funds equitably throughout the rest of the county.

(2) The funds allocated in section 7(1)(b) of this act must be allocated directly to the regional homelessness authority or such successor entity to be distributed equitably throughout the county.

NEW SECTION. **Sec.**  A tax authorized under this chapter expires twenty-five years after the date of imposition. A county legislative authority may by ordinance reauthorize the imposition of the tax subject to the conditions and restrictions of this chapter.

**Sec.**  RCW 48.14.080 and 2010 1st sp.s. c 23 s 520 are each amended to read as follows:

(1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title are in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

(a) Taxes on real and tangible personal property;

(b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; (iv) services, including digital automated services as defined in RCW 82.04.192; and (v) digital goods and digital codes as those terms are defined in RCW 82.04.192; ((~~and~~))

(c) The tax imposed in RCW 82.04.260((~~(9)~~)) (10), regarding public and nonprofit hospitals; and

(d) The tax imposed by section 3 of this act.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal corporation, quasi‑municipal corporation, or other political subdivision.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 83 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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