

ESSB 6492 - H AMD 1096

By Representative Stokesbary

NOT ADOPTED 02/06/2020

1 On page 15, line 11, after "after" strike "~~((January))~~ April"
2 and insert "January"

3 On page 15, line 11, after "1," strike "2020" and insert
4 "~~((2020))~~ 2021"

5 On page 18, after line 2, insert the following:

6 **"Sec. 5.** 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
22 82.04.290(2), a workforce education investment surcharge is imposed
23 on specified persons. The surcharge is equal to the total amount of
24 tax payable by the person on business activities taxed under RCW
25 82.04.290(2), before application of any tax credits, multiplied by
26 the rate of ~~((twenty))~~ sixteen and seven-tenths of one percent.

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

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

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

8 (a) Computer software publishing or publishing and reproduction.
9 Establishments in this industry carry out operations necessary for
10 producing and distributing computer software, such as designing,
11 providing documentation, assisting in installation, and providing
12 support services to software purchasers. These establishments may
13 design, develop, and publish, or publish only. These establishments
14 may publish and distribute software remotely through subscriptions
15 and downloads;

16 (b) Conducting original investigation undertaken on a systematic
17 basis to gain new knowledge or the application of research findings
18 or other scientific knowledge for the creation of new or
19 significantly improved products or processes. Techniques may include
20 modeling and simulation. The industries within this industry group
21 are defined on the basis of the domain of research and on scientific
22 expertise of the establishment;

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

27 (d) Providing expertise in the field of information technologies
28 through one or more of the following activities: (i) Writing,
29 modifying, testing, and supporting computer software to meet the
30 needs of a particular customer; (ii) planning and designing computer
31 systems that integrate computer hardware, computer software, and
32 communication technologies; (iii) on-site management and operation of
33 clients' computer systems and data processing facilities; or (iv)
34 other professional and technical computer-related advice and
35 services;

36 (e) Performing central banking functions, such as issuing
37 currency, managing the nation's money supply and international
38 reserves, holding deposits that represent the reserves of other banks
39 and other central banks, and acting as a fiscal agent for the central
40 government;

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

15 (g) (i) Acting as principals in buying or selling financial
16 contracts, except investment bankers, securities dealers, and
17 commodity contracts dealers; (ii) acting as agents or brokers, except
18 securities brokerages and commodity contracts brokerages, in buying
19 or selling financial contracts; or (iii) providing other investment
20 services except securities and commodity exchanges, such as portfolio
21 management, investment advice, and trust, fiduciary, and custody
22 services;

23 (h) Supplying information, such as news reports, articles,
24 pictures, and features, to the news media. This industry comprises
25 establishments primarily engaged in providing library or archive
26 services. These establishments are engaged in maintaining collections
27 of documents and facilitating the use of these documents as required
28 to meet the informational, research, educational, or recreational
29 needs of their user. These establishments may also acquire, research,
30 store, preserve, and generally make accessible to the public
31 historical documents, photographs, maps, audio material, audiovisual
32 material, and other archival material of historical interest. All or
33 portions of these collections may be accessible electronically. This
34 industry comprises establishments engaged in: (i) Publishing and
35 broadcasting content on the internet exclusively; or (ii) operating
36 web sites that use a search engine to generate and maintain extensive
37 databases of internet addresses and content in an easily searchable
38 format, known as web search portals. The publishing and broadcasting
39 establishments in this industry do not provide traditional versions
40 of the content they publish or broadcast. They provide textual,

1 audio, or video content of general or specific interest on the
2 internet exclusively. Establishments known as web search portals
3 often provide additional internet services, such as email,
4 connections to other web sites, auctions, news, and other limited
5 content, and serve as a home base for internet users. This industry
6 comprises establishments primarily engaged in providing other
7 information services, except news syndicates, libraries, archives,
8 internet publishing and broadcasting, and web search portals;

9 (i) Architectural, engineering, and related services, such as
10 drafting services, building inspection services, geophysical
11 surveying and mapping services, surveying and mapping, except
12 geophysical services and testing services;

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

19 (k) Providing advice and assistance to businesses and other
20 organizations on management, environmental, scientific, and technical
21 issues;

22 (l) Providing infrastructure for hosting or data processing
23 services. These establishments may provide specialized hosting
24 activities, such as web hosting, streaming services, or application
25 hosting, or they may provide general time-share mainframe facilities
26 to clients. Data processing establishments provide complete
27 processing and specialized reports from data supplied by clients or
28 provide automated data processing and data entry services;

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

32 (n) Offering legal services, such as those offered by offices of
33 lawyers, offices of notaries, and title abstract and settlement
34 offices, and paralegal services;

35 (o) Operating or providing access to transmission facilities and
36 infrastructure that they own or lease for the transmission of voice,
37 data, text, sound, and video using wired telecommunications networks.
38 Transmission facilities may be based on a single technology or a
39 combination of technologies. Establishments in this industry use the
40 wired telecommunications network facilities that they operate to

1 provide a variety of services, such as wired telephony services,
2 including voice over internet protocol services, wired audio and
3 video programming distribution, and wired broadband internet
4 services. By exception, establishments providing satellite television
5 distribution services using facilities and infrastructure that they
6 operate are included in this industry;

7 (p) Providing telecommunications services to other establishments
8 in the telecommunications and broadcasting industries by forwarding
9 and receiving communications signals via a system of satellites or
10 reselling satellite telecommunications;

11 (q) Operating and maintaining switching and transmission
12 facilities to provide communications via the airwaves. Establishments
13 in this industry have spectrum licenses and provide services using
14 that spectrum, such as cellular phone services, paging services,
15 wireless internet access, and wireless video services;

16 (r) Extending credit or lending funds raised by credit market
17 borrowing, such as issuing commercial paper or other debt instruments
18 or by borrowing from other financial intermediaries;

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

32 (t) Merchant wholesale distribution of photographic equipment and
33 supplies and office, computer, and computer peripheral equipment and
34 medical, dental, hospital, ophthalmic, and other commercial and
35 professional equipment and supplies;

36 (u) Operating studios and facilities for the broadcasting of
37 programs on a subscription or fee basis. The broadcast programming is
38 typically narrowcast in nature. These establishments produce
39 programming in their own facilities or acquire programming from
40 external sources. The programming material is usually delivered to a

1 third party, such as cable systems or direct-to-home satellite
2 systems, for transmission to viewers;

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

18 (w) Generating, transmitting, or distributing electric power.
19 Establishments in this industry group may perform one or more of the
20 following activities: (i) Operate generation facilities that produce
21 electric energy; (ii) operate transmission systems that convey the
22 electricity from the generation facility to the distribution system;
23 or (iii) operate distribution systems that convey electric power
24 received from the generation facility or the transmission system to
25 the final consumer;

26 (x) Providing specialized design services including interior
27 design, industrial design, graphic design, and others, but not
28 including architectural, engineering, and computer systems design;

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

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

35 (aa) Business-to-business electronic markets that bring together
36 buyers and sellers of goods using the internet or other electronic
37 means and generally receive a commission or fee for the service.
38 Business-to-business electronic markets for durable and nondurable
39 goods are included in this industry. This industry comprises
40 wholesale trade agents and brokers acting on behalf of buyers or

1 sellers in the wholesale distribution of goods. Agents and brokers do
2 not take title to the goods being sold but rather receive a
3 commission or fee for their service. Agents and brokers for all
4 durable and nondurable goods are included in this industry;

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

9 (cc)(i) Manufacturing complete aircraft, missiles, or space
10 vehicles; (ii) manufacturing aerospace engines, propulsion units,
11 auxiliary equipment or parts; (iii) developing and making prototypes
12 of aerospace products; (iv) aircraft conversion; or (v) complete
13 aircraft or propulsion systems overhaul and rebuilding;

14 (dd) Advertising, public relations, and related services, such as
15 media buying, independent media representation, outdoor advertising,
16 direct mail advertising, advertising material distribution services,
17 and other services related to advertising;

18 (ee) Providing services, such as auditing of accounting records,
19 designing accounting systems, preparing financial statements,
20 developing budgets, preparing tax returns, processing payrolls,
21 bookkeeping, and billing;

22 (ff) The independent practice of general or specialized medicine
23 or surgery by businesses comprised of one or more health
24 practitioners having the degree of doctor of medicine or doctor of
25 osteopathy. These practitioners operate private or group practices in
26 their own offices or in the facilities of others, such as hospitals
27 or health maintenance organization medical centers;

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

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

35 (ii) Promoting the interests of an organization's members, except
36 religious organizations, social advocacy organizations, and civic and
37 social organizations. Examples of establishments in this industry are
38 business associations, professional organizations, labor unions, and
39 political organizations;

1 (jj) Holding the securities of or other equity interests in
2 companies and enterprises for the purpose of owning a controlling
3 interest or influencing management decisions or businesses that
4 administer, oversee, and manage other establishments of the company
5 or enterprise and that normally undertake the strategic or
6 organizational planning and decision-making role of the company or
7 enterprise. Establishments that administer, oversee, and manage may
8 hold the securities of the company or enterprise;

9 (kk) For medical and diagnostic laboratories, providing analytic
10 or diagnostic services, including body fluid analysis and diagnostic
11 imaging, generally to the medical profession or to the patient on
12 referral from a health practitioner;

13 (ll) Serving as offices of chief executives and their advisory
14 committees and commissions. This industry includes offices of the
15 president, governors, and mayors, in addition to executive advisory
16 commissions. This industry comprises government establishments
17 serving as legislative bodies and their advisory committees and
18 commissions. Included in this industry are legislative bodies, such
19 as congress, state legislatures, and advisory and study legislative
20 commissions. This industry comprises government establishments
21 primarily engaged in public finance, taxation, and monetary policy.
22 Included are financial administration activities, such as monetary
23 policy, tax administration and collection, custody and disbursement
24 of funds, debt and investment administration, auditing activities,
25 and government employee retirement trust fund administration. This
26 industry comprises government establishments serving as councils and
27 boards of commissioners or supervisors and such bodies where the
28 chief executive is a member of the legislative body itself. This
29 industry comprises American Indian and Alaska Native governing
30 bodies. Establishments in this industry perform legislative,
31 judicial, and administrative functions for their American Indian and
32 Alaska Native lands. Included in this industry are American Indian
33 and Alaska Native councils, courts, and law enforcement bodies. This
34 industry comprises government establishments primarily engaged in
35 providing general support for government. Such support services
36 include personnel services, election boards, and other general
37 government support establishments that are not classified elsewhere
38 in public administration;

39 (mm) Providing a range of office administrative services, such as
40 financial planning, billing and recordkeeping, personnel, and

1 physical distribution and logistics, for others on a contract or fee
2 basis. These establishments do not provide operating staff to carry
3 out the complete operations of a business;

4 (nn) Providing professional, scientific, or technical services
5 including marketing research, public opinion polling, photographic
6 services, translation and interpretation services, and veterinary
7 services. This category does not include legal services, accounting,
8 tax preparation, bookkeeping, architectural, engineering, and related
9 services, specialized design services, computer systems design,
10 management, scientific and technical consulting services, scientific
11 research and development services, or advertising services;

12 (oo) The independent practice of general or specialized dentistry
13 or dental surgery by businesses comprised of one or more health
14 practitioners having the degree of doctor of dental medicine, doctor
15 of dental surgery, or doctor of dental science. These practitioners
16 operate private or group practices in their own offices or in the
17 facilities of others, such as hospitals or health maintenance
18 organization medical centers. They may provide either comprehensive
19 preventive, cosmetic, or emergency care, or specialize in a single
20 field of dentistry;

21 (pp) The independent practice of general or specialized medicine
22 or surgery, or general or specialized dentistry or dental surgery, by
23 businesses comprised of one or more independent health practitioners,
24 other than physicians and dentists;

25 (qq) Providing ambulatory health care services.

26 (3) (a) (i) For the purposes of this section, a person is primarily
27 engaged within this state in any combination of the activities
28 described in subsection (2) of this section if more than fifty
29 percent of the person's cumulative gross amount reportable under this
30 chapter during the entire current or immediately preceding calendar
31 year was generated from engaging in any one or more of the activities
32 described in subsection (2) of this section. For purposes of this
33 subsection, "gross amount reportable" means the total value of
34 products, gross proceeds of sales, and gross income of the business,
35 reportable to the department before application of any tax
36 deductions.

37 (ii) If a person was not primarily engaged within this state in
38 any combination of the activities described in subsection (2) of this
39 section during the immediately preceding year, and the person is
40 unsure whether the person will be subject to the workforce investment

1 surcharge for the current calendar year until the close of the
2 current calendar year, the person must, if necessary, file corrected
3 returns with the department of revenue to pay any additional tax due
4 under this section for the current calendar year. Payment of
5 additional tax, along with corrected returns, is due and payable when
6 the person's last return for the calendar year during which the tax
7 liability accrued is due and payable. Additional tax due under this
8 section is subject to penalties and interest as provided under
9 chapter 82.32 RCW only if the tax is not paid in full by the date due
10 as provided in this subsection (3)(a)(ii).

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

16 (4)(a) Beginning with business activities occurring on or after
17 January 1, 2020, in addition to the taxes imposed under RCW
18 82.04.290(2), a workforce education investment surcharge is imposed
19 on select advanced computing businesses as follows:

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

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

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

39 (c) For persons subject to the surcharge imposed under this
40 subsection (4) that report under one or more tax classifications, the

1 surcharge applies only to business activities taxed under RCW
2 82.04.290(2).

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

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

16 (f) For the purposes of this subsection (4) the following
17 definitions apply:

18 (i) "Advanced computing" means designing or developing computer
19 software or computer hardware, whether directly or contracting with
20 another person, including modifications to computer software or
21 computer hardware, cloud computing services, or operating an online
22 marketplace, an online search engine, or online social networking
23 platform;

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

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

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

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

36 (vi) "Select advanced computing business" means a person who is a
37 member of an affiliated group with at least one member of the
38 affiliated group engaging in the business of advanced computing, and
39 the affiliated group has worldwide gross revenue of more than twenty-
40 five billion dollars during the entire current or immediately

1 preceding calendar year. A person who is primarily engaged within
2 this state in the provision of commercial mobile service, as that
3 term is defined in 47 U.S.C. Sec. 332(d)(1), shall not be considered
4 a select advanced computing business. A person who is primarily
5 engaged in this state in the operation and provision of access to
6 transmission facilities and infrastructure that the person owns or
7 leases for the transmission of voice, data, text, sound, and video
8 using wired telecommunications networks shall not be considered a
9 select advanced computing business.

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

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

17 (7) The department has the authority to determine through an
18 audit or other investigation whether a person is subject to the
19 surcharges imposed in this section. The department's determination
20 that a person is subject to the surcharge is presumed to be correct
21 unless the person shows by clear, cogent, and convincing evidence
22 that the department's determination was incorrect. The increased
23 evidentiary standard under this subsection (7) does not apply after
24 January 1, 2022.

25 NEW SECTION. **Sec. 6.** Section 5 of this act expires January 1,
26 2021."

27 Renumber the remaining sections consecutively and correct any
28 internal references accordingly.

29 On page 18, beginning on line 9, strike all of section 7 and
30 insert the following:

31 "NEW SECTION. **Sec. 7.** (1) Sections 1 through 4 of this act take
32 effect January 1, 2021.

33 (2) Section 5 of this act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of
35 the state government and its existing public institutions, and takes
36 effect immediately."

1 On page 18, line 17, after "Section" strike "4" and insert "5"

2 On page 18, line 21, after "after" strike "April 1, 2020" and
3 insert "January 1, 2021"

4 Correct the title.

EFFECT: Reduces the current Workforce Education Investment surcharge to 16.7 percent. Delays implementation of the provisions containing the new business and occupation service rate of 1.75 percent and the new advanced computing surcharge of 1.22 percent until January 1, 2021.

--- END ---