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**SUBSTITUTE SENATE BILL 5763**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Energy & Utilities (originally sponsored by Senators Finkbeiner, Brown, Rossi, McAuliffe, Roach, Kohl, Jacobsen, Hochstatter, Haugen, Goings and West)

Read first time 02/27/97.

1 AN ACT Relating to prohibiting the taxation of internet service  
2 providers as network telephone services providers; amending RCW  
3 82.04.055 and 82.04.065; adding a new section to chapter 35.21 RCW;  
4 creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the newly  
7 emerging business of providing internet service is providing widespread  
8 benefits to all levels of society. The legislature further finds that  
9 this business is important to our state's continued growth in the high-  
10 technology sector of the economy and that, as this industry emerges, it  
11 should not be burdened by new taxes that might not be appropriate for  
12 the type of service being provided.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW  
14 to read as follows:

15 Until July 1, 1999, a city or town that through ordinances raises  
16 revenue using a gross receipts tax, may only tax internet service  
17 providers under the service classification of the business and

1 operations tax. For the purposes of this section, "internet service"  
2 has the same meaning as in RCW 82.04.065.

3 **Sec. 3.** RCW 82.04.055 and 1993 sp.s. c 25 s 201 are each amended  
4 to read as follows:

5 (1) "Selected business services" means:

6 (a) Stenographic, secretarial, and clerical services.

7 (b) Computer services, including but not limited to computer  
8 programming, custom software modification, custom software  
9 installation, custom software maintenance, custom software repair,  
10 training in the use of custom software, computer systems design, and  
11 custom software update services.

12 (c) Data processing services, including but not limited to word  
13 processing, data entry, data retrieval, data search, information  
14 compilation, payroll processing, business accounts processing, data  
15 production, and other computerized data and information storage or  
16 manipulation. Data processing services also includes the use of a  
17 computer or computer time for data processing whether the processing is  
18 performed by the provider of the computer or by the purchaser or other  
19 beneficiary of the service.

20 (d) Information services, including but not limited to electronic  
21 data retrieval or research that entails furnishing financial or legal  
22 information, data or research, internet service as defined in RCW  
23 82.04.065, general or specialized news, or current information unless  
24 such news or current information is furnished to a newspaper publisher  
25 or to a radio or television station licensed by the federal  
26 communications commission.

27 (e) Legal, arbitration, and mediation services, including but not  
28 limited to paralegal services, legal research services, and court  
29 reporting services.

30 (f) Accounting, auditing, actuarial, bookkeeping, tax preparation,  
31 and similar services.

32 (g) Design services whether or not performed by persons licensed or  
33 certified, including but not limited to the following:

34 (i) Engineering services, including civil, electrical, mechanical,  
35 petroleum, marine, nuclear, and design engineering, machine designing,  
36 machine tool designing, and sewage disposal system designing;

1 (ii) Architectural services, including but not limited to:  
2 Structural or landscape design or architecture, interior design,  
3 building design, building program management, and space planning.

4 (h) Business consulting services. Business consulting services are  
5 those primarily providing operating counsel, advice, or assistance to  
6 the management or owner of any business, private, nonprofit, or public  
7 organization, including but not limited to those in the following  
8 areas: Administrative management consulting, general management  
9 consulting, human resource consulting or training, management  
10 engineering consulting, management information systems consulting,  
11 manufacturing management consulting, marketing consulting, operations  
12 research consulting, personnel management consulting, physical  
13 distribution consulting, site location consulting, economic consulting,  
14 motel, hotel, and resort consulting, restaurant consulting, government  
15 affairs consulting, and lobbying.

16 (i) Business management services, including but not limited to  
17 administrative management, business management, and office management,  
18 but not including property management or property leasing, motel,  
19 hotel, and resort management, or automobile parking management.

20 (j) Protective services, including but not limited to detective  
21 agency services and private investigating services, armored car  
22 services, guard or protective services, lie detection or polygraph  
23 services, and security system, burglar, or fire alarm monitoring and  
24 maintenance services.

25 (k) Public relations or advertising services, including but not  
26 limited to layout, art direction, graphic design, copy writing,  
27 mechanical preparation, opinion research, marketing research,  
28 marketing, or production supervision, but excluding services provided  
29 as part of broadcast or print advertising.

30 (l) Aerial and land surveying, geological consulting, and real  
31 estate appraising.

32 (2) Subsection (1) of this section notwithstanding, the term  
33 "selected business services" does not include:

34 (a) The provision of either permanent or temporary employees.

35 (b) Services provided by a public benefit nonprofit organization,  
36 as defined in RCW 82.04.366, to the state of Washington, its political  
37 subdivisions, municipal corporations, or quasi-municipal corporations.

38 (c) Services related to the identification, investigation, or  
39 cleanup arising out of the release or threatened release of hazardous

1 substances when the services are remedial or response actions performed  
2 under federal or state law, or when the services are performed to  
3 determine if a release of hazardous substances has occurred or is  
4 likely to occur.

5 (d) Services provided to or performed for, on behalf of, or for the  
6 benefit of a collective investment fund such as: (i) A mutual fund or  
7 other regulated investment company as defined in section 851(a) of the  
8 Internal Revenue Code of 1986, as amended; (ii) an "investment company"  
9 as that term is used in section 3(a) of the Investment Company Act of  
10 1940 as well as an entity that would be an investment company under  
11 section 3(a) of the Investment Company Act of 1940 except for the  
12 section 3(c)(1) or (11) exemptions, or except that it is a foreign  
13 investment company organized under laws of a foreign country; (iii) an  
14 "employee benefit plan," which includes any plan, trust, commingled  
15 employee benefit trusts, or custodial arrangement that is subject to  
16 the Employee Retirement Income Security Act of 1974, as amended, 29  
17 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401,  
18 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal  
19 Revenue Code of 1986, as amended, or similar plan maintained by state  
20 or local governments, or plans, trusts, or custodial arrangements  
21 established to self-insure benefits required by federal, state, or  
22 local law; (iv) a fund maintained by a tax exempt organization as  
23 defined in section 501(c)(3) or 509(a) of the Internal Revenue Code of  
24 1986, as amended, for operating, quasi-endowment, or endowment  
25 purposes; or (v) funds that are established for the benefit of such tax  
26 exempt organization such as charitable remainder trusts, charitable  
27 lead trusts, charitable annuity trusts, or other similar trusts.

28 (e) Research or experimental services eligible for expense  
29 treatment under section 174 of the Internal Revenue Code of 1986, as  
30 amended.

31 (f) Financial services provided by a financial institution. The  
32 term "financial institution" means a corporation, partnership, or other  
33 business organization chartered under Title 30, 31, 32, or 33 RCW, or  
34 under the National Bank Act, as amended, the Homeowners Loan Act, as  
35 amended, or the Federal Credit Union Act, as amended, or a holding  
36 company of any such business organization that is subject to the Bank  
37 Holding Company Act, as amended, or the Homeowners Loan Act, as  
38 amended, or a subsidiary or affiliate wholly owned or controlled by one  
39 or more financial institutions, as well as a lender approved by the

1 United States secretary of housing and urban development for  
2 participation in any mortgage insurance program under the National  
3 Housing Act, as amended. The term "financial services" means those  
4 activities authorized by the laws cited in this subsection (2)(f) and  
5 includes services such as mortgage servicing, contract collection  
6 servicing, finance leasing, and services provided in a fiduciary  
7 capacity to a trust or estate.

8 **Sec. 4.** RCW 82.04.065 and 1983 2nd ex.s. c 3 s 24 are each amended  
9 to read as follows:

10 (1) "Competitive telephone service" means the providing by any  
11 person of telecommunications equipment or apparatus, or service related  
12 to that equipment or apparatus such as repair or maintenance service,  
13 if the equipment or apparatus is of a type which can be provided by  
14 persons that are not subject to regulation as telephone companies under  
15 Title 80 RCW and for which a separate charge is made.

16 (2) "Internet" means the international computer network of both  
17 federal and nonfederal interoperable packet switched data networks,  
18 including the graphical subnetwork called the world wide web.

19 (3) "Internet service" means a service that includes computer  
20 processing applications, provides the user with additional or  
21 restructured information, or permits the user to interact with stored  
22 information through the internet or a proprietary subscriber network.  
23 Internet service includes provision of internet electronic mail, access  
24 to the internet for information retrieval and hosting of information  
25 for retrieval over the internet or the graphical subnetwork called the  
26 world wide web.

27 (4) "Network telephone service" means the providing by any person  
28 of access to a local telephone network, local telephone network  
29 switching service, toll service, or coin telephone services, or the  
30 providing of telephonic, video, data, or similar communication or  
31 transmission for hire, via a local telephone network, toll line or  
32 channel, cable, microwave, or similar communication or transmission  
33 system. "Network telephone service" includes interstate service,  
34 including toll service, originating from or received on  
35 telecommunications equipment or apparatus in this state if the charge  
36 for the service is billed to a person in this state. "Network  
37 telephone service" includes the provision of transmission to and from  
38 the site of an internet provider via a local telephone network, toll

1 line or channel, cable, microwave, or similar communication or  
2 transmission system. "Network telephone service" does not include the  
3 providing of competitive telephone service, the providing of cable  
4 television service, ~~((nær))~~ the providing of broadcast services by  
5 radio or television stations, nor the provision of internet service,  
6 including the reception of dial-in connection, provided at the site of  
7 the internet service provider.

8 ~~((+3))~~ (5) "Telephone service" means competitive telephone service  
9 or network telephone service, or both, as defined in subsections (1)  
10 and ~~((+2))~~ (4) of this section.

11 ~~((+4))~~ (6) "Telephone business" means the business of providing  
12 network telephone service, as defined in subsection ~~((+2))~~ (4) of this  
13 section. It includes cooperative or farmer line telephone companies or  
14 associations operating an exchange.

15 NEW SECTION. **Sec. 5.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and takes effect  
22 immediately.

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