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**HOUSE BILL 2948**

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

**By** Representatives Springer and Macri

AN ACT Relating to granting additional and progressive tax authority for counties with populations exceeding two million and cities therein to impose an excise tax on businesses that addresses the affordable housing crisis and reduces homelessness through evidence-based practices that will save lives and improve public safety, while also ensuring certainty and predictability for businesses; adding a new section to chapter 43.31 RCW; adding a new chapter to Title 82 RCW; and declaring an emergency.

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

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

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

(2) "Affiliated group" means a group of two or more persons that are affiliated with each other.

(3) "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.

(4) "City" means a city in the county that meets the requirements in section 9(2)(b) or (c) of this act or is a participating city.

(5)(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 paid in any medium other than cash.

(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.

(6) "Control" means the possession, directly or indirectly, of more than eighty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(7) "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.

(8)(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; and

(iv) Other owners of pass-through entities.

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

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

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

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

(12) "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.

(13) "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.

(14) "Gross receipts" means the value proceeding or accruing by reason of the transaction of business engaged in and includes gross proceeds of sales, compensation for rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor cost, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued and without any deduction on account of losses.

(15) "Implementation plan" means a six-year plan adopted by the county that guides investments funded from the tax. The plan: (a) Includes priorities, goals, and performance measures for the revenue allocation consistent with the restrictions identified in this chapter; (b) does not include specific projects that should or should not be funded; and (c) is developed by the county executive based on recommendations from a majority of the advisory committee.

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

(17) "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.

(18) "Participating city" is a city with a population of at least sixty thousand that is located in the county and meets the requirements in section 8 of this act.

(19) "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.

(20) "Payroll expense" means the compensation paid in the county to an employee if:

(a) The employee is primarily assigned within the county;

(b) The employee is not primarily assigned to any place of business for the tax year and the employee performs fifty percent or more of his or her service for the tax year in the county; or

(c) The employee is not primarily assigned to any place of business for the tax year, the employee does not perform fifty percent or more of his or her service in any county, and the employee resides in the county.

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

(22) "Regional homelessness authority" means the entity created by the county to address the homelessness crisis in a unified, comprehensive, and equity-centered matter, or its successor entity.

(23) "Small business" means any business:

(a) With fifty employees or fewer; and

(b) That reports gross receipts of no more than three million dollars in the immediately preceding tax year, unless (i) the person is affiliated with one or more persons, or (ii) the aggregate gross receipts of the business subject to the tax imposed under this chapter for all affiliated persons was greater than or equal to three million dollars for the immediately preceding tax year.

(24) "Subregion" means the three areas of the county, as determined by the county, each having one of the three most populous cities as those populations existed on the effective date of this section.

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

(26) "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.**  COUNTY PAYROLL TAX. (1) Subject to this chapter, a county may, by ordinance enacted by its county legislative authority, impose a payroll expense tax on employers engaging in business. The tax imposed by this chapter is levied on employers and must be paid quarterly. 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, less any deductions authorized under subsection (3) of this section, multiplied by a rate of twenty-five hundredths 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 does not have authority to tax based on federal or state law;

(v) A small business;

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

(vii) Businesses that are subject to taxes imposed under chapter 48.14 RCW.

(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 may 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 tax would place an undue burden on interstate commerce or violate other constitutional requirements, a taxpayer is allowed a credit to the extent necessary to preserve the validity of the tax, and still apply the tax to as much of the taxpayer's activities as may be subject to the taxing authority.

(7) A limited liability company, a professional liability company, a partnership, or any other pass-through entity, shall report and pay the tax on payroll expense with respect to employees defined in section 2(8)(b) of this act. Self-employed individuals shall report and pay the tax on the payroll expense with respect to themselves.

(8) 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.

NEW SECTION. **Sec.**  ADJUSTMENTS. Beginning on January 1, 2021, and on January 1st of every odd 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(23) 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.**  IMPLEMENTATION. (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 must enter into an interlocal agreement with the employment security department 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.

(3)(a) To aid in the effective administration of this chapter, the county may require a person claiming an exemption under section 3(4) of this act to identify all of the person's affiliates, including their department tax registration number or unified business identifier number, as may be applicable, or to certify that the person is not affiliated with any other person. Requests under this subsection (3) must be in writing and may be made electronically.

(b) If the county establishes, by clear, cogent, and convincing evidence, that a person, with intent to evade the payroll expense tax authorized by this chapter, failed to provide the county with complete and accurate information in response to a written request under (a) of this subsection within thirty days of such request, the person is ineligible for an exemption under section 3(4) of this act for the entire current calendar year and the following four calendar years. However, the department must waive the provisions of this subsection (3)(b) for any tax reporting period that the person is otherwise eligible for an exemption in section 3(4) of this act if (i) the county has not previously determined that the person failed to fully comply with (a) of this subsection, and (ii) within thirty days of the notice of additional tax due as a result of the person's failure to fully comply with (a) of this subsection, the county determines that the person has come into full compliance with (a) of this subsection.

(c) If a taxpayer is subject to the reconciliation provisions of RCW 82.04.462(4), and calculates payroll expense of the business subject to the tax imposed under section 3 of this act for the immediately preceding calendar year, or aggregate payroll expense of the business subject to the tax imposed under section 3 of this act for the immediately preceding calendar year for all affiliated persons, based on incomplete information, the taxpayer must correct the reporting for the current calendar year when complete information for the immediately preceding calendar year is available.

(d) To ensure administrative ease and efficiency, the county must allow collection through the same program that cities use to report taxes or fees on a business' gross receipts.

NEW SECTION. **Sec.**  CONFIDENTIALITY. 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.**  USE OF FUNDS. (1) A county imposing the tax authorized under this chapter may use the money collected to cover the necessary costs of imposition, collection, and administration of the tax, including recovery of amounts used to initially set up the administration system. Following the second full year of collection of the tax, a county imposing the tax must not use more than five percent of the money collected each year to cover costs of imposition, collection, and administration of the tax. Remaining money or bonds issued under this chapter may only be used for the following purposes:

(a) Acquire, rehabilitate, preserve, 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 and fund the operations and maintenance costs of units of affordable or supportive housing including services in supportive housing;

(b) Provide for housing, shelter, and evidence-based interventions that address and prevent homelessness, which prioritize serving youth and young adults while also serving families and adults, including but not limited to: Operating, repairing, and staffing shelters; transitional housing and supportive housing; and providing assistance that is designated for victims of human trafficking and their families, emergency shelter, or rental payments;

(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 that prioritize diversion to persons with behavioral health conditions with frequent criminal justice system involvement.

(2) To carry out this section including, without limitation, 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. The costs of issuance may not be considered imposition, collection, and administration costs of the tax authorized under this chapter for the purposes of subsection (1) of this section.

NEW SECTION. **Sec.**  PARTICIPATING CITY DESIGNATION. (1) Before July 1, 2022, a city within a county imposing the payroll expense tax authorized by this chapter with a population of more than sixty thousand, may by the majority vote of the legislative authority become a participating city.

(2) A participating city is entitled to distributions from the county based on the following calculations:

(a) The county must determine the amount of payroll expense reported by an employer attributable to work performed or services rendered by the employer's employees in the boundaries of the participating city or otherwise attributable to the city's jurisdiction.

(b) The county must multiply the payroll expense allocated in (a) of this subsection by one-tenth of one percent.

NEW SECTION. **Sec.**  FUND DISTRIBUTIONS AND DISBURSEMENTS. (1) Prior to any disbursements under this section, the following distributions must be made:

(a) One one-thousandths of one percent of the revenue collected from the imposition of the tax authorized under this chapter must be deposited into the payroll tax oversight account created in section 12 of this act.

(b) Distributions to any participating cities based on the calculations in section 8(2) of this act must be made.

(c) The funds necessary for the imposition, collection, and administration of the tax by the county as authorized in section 7 of this act.

(2) The remaining funds must be disbursed by the county consistent with the adopted implementation plan as follows:

(a)(i) Sixty percent of the funds must be allocated to the purposes identified in section 7(1)(a) of this act which may only be provided to persons whose income is at or below eighty percent of the median income of the county. At least fifty percent of the funds allocated under this subsection (2)(a)(i) must be provided to persons whose income is at or below thirty percent of the median income of the county.

(ii) Except as otherwise provided in (a)(iii) of this subsection, these funds must be appropriated by the county such that forty-five percent of the revenue will be spent in the subregion with the most populous city, and twenty-seven and one-half percent of the revenue will be spent in each of the two other subregions. The county shall seek to ensure that representatives of the various subregions of the county are given a strong role in investment decisions.

(iii) If there are insufficient applications in a subregion that meet the minimum requirements of the county's request for proposals during a county funding cycle, funds may be allocated to a project in another subregion.

(iv) For the five years after revenue is first collected, these funds may also be allocated for purposes identified in section 7(1)(b) of this act, except rental assistance, which may be funded on an ongoing basis.

(b)(i) Ten percent of the funds must be allocated for the purposes identified in section 7(1)(d) of this act. The county must distribute the funds equitably throughout the county.

(ii) The cities in the county must work with the county so that any new facilities funded by this chapter are sited equitably in each subregion.

(c) Subject to the requirements of this subsection (2)(c), twenty percent of the funds must be directly appropriated to any city in the county with a population greater than sixty thousand residents. The funds must be allocated proportionally based on population.

(i) Within three months of the effective date of this section, the legislative authority of the city must pass a resolution in favor of the county imposing the tax authorized by this chapter and requesting direct appropriation.

(ii) Funds may be used for any of the purposes identified by section 7(1) (a), (b) or (d) of this act, consistent with the implementation plan. A city may not spend more than twenty-five percent of the funds for the purpose identified by section 7(1)(d) of this act. A city may only spend funds for the purposes identified by section 7(1)(b) of this act if the city has a contract with the regional homelessness authority.

(iii) Funds must be used by the city within the biennial budget calendar of the county. If a city is unable to spend its full appropriation, the funds will be returned to the county for the purposes identified by section 7(1)(a) of this act.

(d) Subject to the requirements of section 7(1)(d) of this act, ten percent of the funds must be set aside for a grant program, to be created by the county, to provide grants to any city in the county with a population less than sixty thousand residents.

(i) Within three months of the effective date of this section, the legislative authority of the city must pass a resolution in favor of the county imposing the tax authorized by this chapter and identifying an interest in receiving grant funds.

(ii) Funds may be used for any of the purposes identified by section 7(1) (a), (b) or (d) of this act, consistent with the implementation plan. A city may not spend more than twenty-five percent of the funds for the purpose identified by section 7(1)(d) of this act. A city may only spend funds for the purposes identified by section 7(1)(b) of this act if that city has a contract with the regional homelessness authority.

(iii) Funds must be used by the city within the biennial budget calendar of the county. If a city is unable to spend its full appropriation, the funds will be returned to the county for the purposes identified by section 7(1)(a) of this act.

(3) A participating city must disburse the revenue collected consistent with the implementation plan as follows:

(a) Sixty percent of the funds must be allocated to the purposes identified in section 7(1)(a) of this act which may only be provided to persons whose income is at or below eighty percent of the median income of the county. At least fifty percent of the funds allocated under this subsection (3)(a) must be provided to persons whose income is at or below thirty percent of the median income of the county.

(b) No more than twenty-five percent of the funds may be allocated to purposes identified in section 7(1)(d) of this act.

(c) In order to ensure a regional approach, funds may be allocated to the purposes identified in section 7(1)(b) of this act only if the city has a contract with the regional homelessness authority, or its successor entity, operating in the county.

(4)(a) Subject to the provisions of (b) of this subsection, moneys collected from the tax imposed by this section and received by the county or any city may not supplant existing funds. For the purposes of this section, existing funds means the actual capital and operating expenditures for the 2018 calendar year. The requirement in this subsection does not apply to one-time transfers, expired grant, loans, lost local revenue as a result of an action by another government, or lost local revenue as the result of an expiring levy. Baseline budgets must be reviewed and approved by the department of commerce.

(b) Beginning six years after the tax is imposed, moneys collected from the tax may be used to supplant existing funds as defined in (a) of this subsection if recommended by a supermajority vote of the advisory committee established in section 10 of this act.

(5) Beginning December 1, 2025, and every five years thereafter, the county shall provide an implementation report to the appropriate committees of the legislature. A participating city must provide to the county all the information necessary to prepare this report. The report must include an analysis of the results of the program compared to the goals and measures identified in any implementation plan to date, and, if necessary, why the goals are not being met.

(6) The county and city shall ensure a performance audit is conducted by the state auditor no later than three years after the date the tax is first collected and periodically thereafter.

(7) Any city or county receiving directly appropriated funds from this tax must create a new account to receive these funds which must be kept separate from any other revenues or expenses in their budgets.

(8) The county and any participating city must provide adequate staffing, of at least funds equal to one full-time equivalent staff, to the advisory committee established in section 10 of this act.

NEW SECTION. **Sec.**  ADVISORY COMMITTEE. (1) The county must designate a committee to act as an advisory and accountability commission that will:

(a) Identify goals and priorities for a county-developed implementation plan;

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

(c) Monitor the use of the funds to ensure that it remains consistent with and is meeting the goals of this section;

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

(e) Hold at least one public meeting to present the results of the biennial report and to propose any corrective actions to the implementation plan.

(2) The membership of the committee must consist of:

(a) Fifty percent who are members representing employers paying the tax, of which one-half must include members who represent the highest ten percent of taxpayers;

(b) Members who represent persons or communities served by the tax, including representatives of people with lived experience and communities disproportionally impacted by homelessness and the affordable housing crisis; and

(c) One representative appointed by cities from each subregion and one representative appointed by state officials from each subregion.

NEW SECTION. **Sec.**  TIME PERIODS. (1) The county legislative authority may impose the tax in accordance with the terms of this chapter. Except as provided in subsection (2) of this section, the tax may be imposed by ordinance for a period not to exceed ten years, and may be reimposed by ordinance for one or more subsequent periods each not to exceed ten years.

(2) If any portion of the tax is pledged within the first ten years of any such period to pay debt service on bonds, that portion of the tax must continue and that period must be extended until the bonds are paid in full.

NEW SECTION. **Sec.**  A new section is added to chapter 43.31 RCW to read as follows:

PAYROLL TAX OVERSIGHT ACCOUNT.

(1) The payroll tax oversight account is created in the state treasury. Moneys in the account may be spent only after appropriation.

(2) One one-thousandths of one percent of the revenue collected from the tax imposed by a county pursuant to section 3 of this act must be deposited in the payroll tax oversight account.

(3) Expenditures from the payroll tax oversight account must be used exclusively for:

(a) Technical assistance and oversight coordination provided by the department of commerce; and

(b) Audits of the county, participating cities, and any cities receiving funds pursuant to section 9 of this act to ensure compliance with this chapter, to be conducted by the state auditor.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 82 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.

**--- END ---**