AN ACT Relating to ensuring the ongoing sustainability and vitality of the Washington health benefit exchange by providing a financing mechanism sufficient to defray the exchange's operating expenses; amending RCW 43.71.010, 43.71.060, and 48.14.0201; adding a new section to chapter 43.71 RCW; and adding a new section to chapter 43.135 RCW.

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

Sec. 1. RCW 43.71.010 and 2012 c 87 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

(1) "Affordable care act" means the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(2) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.
(3) "Board" means the governing board established in RCW 43.71.020.
(4) "Commissioner" means the insurance commissioner, established in Title 48 RCW.
(5) "Exchange" means the Washington health benefit exchange established in RCW 43.71.020.
(6) "Self-sustaining" means capable of operating without direct state tax subsidy) with revenue attributable to the operations of the exchange. Self-sustaining sources include, but are not limited to, federal grants, federal premium tax subsidies and credits, charges to health carriers, premiums paid by enrollees, and premium taxes under RCW 48.14.0201(5)(b).

Sec. 2. RCW 43.71.060 and 2012 c 87 s 5 are each amended to read as follows:

(1) The health benefit exchange account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to fund the operation of the exchange. The following funds must be deposited in the account:

(1) All receipts from federal grants received under the affordable care act may be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants.

(2) This section expires January 1, 2014);

(2) Premium taxes collected under RCW 48.14.0201(5)(b); and

(3) Assessments authorized under section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 43.71 RCW to read as follows:

(1) Beginning January 1, 2014, and on a quarterly basis, the exchange may require each carrier writing premiums for qualified health benefits plans or dental plans through the exchange to pay an assessment in an amount necessary to fund the operations of the

HB 1947 p. 2
exchange in the following quarter. Assessments of carriers may be made only if the amount of expected premium taxes, as provided under RCW 48.14.0201(5)(b), and other funds deposited in the health benefit exchange account in the current quarter are insufficient to fund exchange operations in the following quarter at the level appropriated by the legislature for that purpose in the omnibus appropriations act.

(2) On a quarterly basis, the board shall determine the amount of the assessment by multiplying, by a fraction, for each carrier offering health or dental coverage in the exchange, the number of its covered lives in qualified health plans and dental plans in the exchange. The numerator of the fraction is an estimate of the shortfall in revenues in the health benefit exchange account necessary to operate the exchange at the level appropriated for that purpose by the legislature in the omnibus appropriations act for the following quarter. The denominator of the fraction equals the total number of expected covered lives in the exchange for the fiscal year that the assessment will be collected in.

(3) The exchange shall deposit proceeds from the assessments in the health benefit exchange account under RCW 43.71.060.

(4) The board shall establish procedures allowing carriers subject to assessments under this section to have grievances reviewed by an impartial body and reported to the board.

(5) By July 1, 2016, the state auditor shall conduct a performance review of the cost of exchange operations and shall make recommendations to the board and the health care committees of the legislature addressing improvements in cost performance and adoption of best practices. The auditor shall further evaluate the potential cost and customer service benefits through regionalization with other states of some exchange operation functions or through a partnership with the federal government. The cost of the state auditor review must be borne by the exchange.

NEW SECTION. Sec. 4. A new section is added to chapter 43.135 RCW to read as follows:

RCW 43.135.034(4) does not apply to the dedication of premium taxes established under RCW 48.14.0201(5)(b).
Sec. 5. RCW 48.14.0201 and 2011 c 47 s 8 are each amended to read as follows:

(1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer must pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax must be equal to the total amount of all premiums and prepayments for health care services collected or received by the taxpayer under RCW 48.14.090 during the preceding calendar year multiplied by the rate of two percent. For tax purposes, the reporting of premiums and prepayments must be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

(3) Taxpayers must prepay their tax obligations under this section. The minimum amount of the prepayments is the percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments is the percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments must be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;
(b) On or before September 15, twenty-five percent;
(c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5)(a) Except as provided in (b) of this subsection, moneys collected under this section are deposited in the general fund.

(b) Beginning January 1, 2014, moneys collected from taxpayers for premiums written on qualified health benefit plans offered through the
health benefit exchange under chapter 43.71 RCW and on premiums written on medicaid plans provided to newly eligible clients enrolling in the medicaid expansion under the federal patient protection and affordable care act of 2010 (42 U.S.C. 1396a(a)(10)(A)(i)(VIII)) must be deposited in the health benefit exchange account under RCW 43.71.060.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035; or

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW.

(c) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state preempts the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision has the right to impose any such taxes upon such taxpayers. This subsection is limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection must not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
commissioner must initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement must deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account must be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner must notify each taxpayer required to make prepayments in that year of the amount of each prepayment and must provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms.

NEW SECTION. Sec. 6. 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.