

2SHB 1460 - H AMD 448

By Representative Chase

1 On page 9, after line 12, insert the following:

2 "NEW SECTION. **Sec. 7.** A new section is added to chapter 43.330
3 RCW to read as follows:

4 (1) Subject to the availability of funds appropriated for this
5 purpose, the department shall establish a rural education and
6 advancement of distressed areas grant program. Only the director or
7 the director's designee may authorize expenditures.

8 (2) This program shall provide grants to local governments, or
9 entities who have entered into an agreement with a local government,
10 to fund programs that bridge the digital divide through increasing
11 broadband access and adoption. Grants may be awarded under this
12 section to assist in funding acquisition, installation, and
13 construction of middle mile and last mile infrastructure that
14 supports fiber broadband services and to assist in funding strategic
15 planning for deploying broadband service in rural and distressed
16 areas.

17 (3) An applicant must submit an application to the department in
18 order to be eligible for funding under this section.

19 (4) The department must evaluate and rank applications using
20 objective criteria as established by the statewide broadband office
21 by rule. Evaluation criteria must be consistent with best efforts to
22 achieve the goals of the statewide broadband office as provided in
23 RCW 43.330.536.

24 (5) The department may adopt rules to implement this section.

25 (6) The definitions in this subsection apply throughout this
26 section unless the context clearly requires otherwise.

27 (a) "Distressed area" has the same meaning as provided in RCW
28 43.168.020.

29 (b) "Rural area" means a county with a population density of less
30 than 100 persons per square mile or a county smaller than 125 square
31 miles as determined by the office of financial management pursuant to
32 RCW 43.62.035. For purposes of this subsection, population levels
33 must be determined as of the effective date of this section.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.330
2 RCW to read as follows:

3 The rural education and advancement of distressed areas account
4 is created in the state treasury. Moneys in the account may be spent
5 only after appropriation. All receipts from the specified portions of
6 the taxes imposed by RCW 82.08.020, 82.12.020, and 82.04.250, or any
7 other source directed to the account, must be deposited into the
8 account. The legislature may appropriate moneys in the account only
9 for the purposes of section 7 of this act, the rural education and
10 advancement of distressed areas grant program.

11 **Sec. 9.** RCW 82.08.020 and 2014 c 140 s 12 are each amended to
12 read as follows:

13 (1) There is levied and collected a tax equal to six and five-
14 tenths percent of the selling price on each retail sale in this state
15 of:

16 (a) Tangible personal property, unless the sale is specifically
17 excluded from the RCW 82.04.050 definition of retail sale;

18 (b) Digital goods, digital codes, and digital automated services,
19 if the sale is included within the RCW 82.04.050 definition of retail
20 sale;

21 (c) Services, other than digital automated services, included
22 within the RCW 82.04.050 definition of retail sale;

23 (d) Extended warranties to consumers; and

24 (e) Anything else, the sale of which is included within the RCW
25 82.04.050 definition of retail sale.

26 (2) There is levied and collected an additional tax on each
27 retail car rental, regardless of whether the vehicle is licensed in
28 this state, equal to five and nine-tenths percent of the selling
29 price. The revenue collected under this subsection must be deposited
30 in the multimodal transportation account created in RCW 47.66.070.

31 (3) Beginning July 1, 2003, there is levied and collected an
32 additional tax of three-tenths of one percent of the selling price on
33 each retail sale of a motor vehicle in this state, other than retail
34 car rentals taxed under subsection (2) of this section. The revenue
35 collected under this subsection must be deposited in the multimodal
36 transportation account created in RCW 47.66.070.

37 (4) For purposes of subsection (3) of this section, "motor
38 vehicle" has the meaning provided in RCW 46.04.320, but does not
39 include:

1 (a) Farm tractors or farm vehicles as defined in RCW 46.04.180
2 and 46.04.181, unless the farm tractor or farm vehicle is for use in
3 the production of marijuana;

4 (b) Off-road vehicles as defined in RCW 46.04.365;

5 (c) Nonhighway vehicles as defined in RCW 46.09.310; and

6 (d) Snowmobiles as defined in RCW 46.04.546.

7 (5) Beginning on December 8, 2005, 0.16 percent of the taxes
8 collected under subsection (1) of this section must be dedicated to
9 funding comprehensive performance audits required under RCW
10 43.09.470. The revenue identified in this subsection must be
11 deposited in the performance audits of government account created in
12 RCW 43.09.475.

13 (6) Beginning on the effective date of this section, 100 percent
14 of the taxes collected under subsection (1) of this section on any
15 specified retail sale, as provided in (a) and (b) of this subsection,
16 must be deposited in the rural education and advancement of
17 distressed areas account created in section 8 of this act. For the
18 purpose of this subsection, "specified retail sale" includes the sale
19 of or charge made for:

20 (a) Custom software or the customization of prewritten computer
21 software, as provided in RCW 82.04.050; or

22 (b) The following digital automated services, as provided in RCW
23 82.04.192:

24 (i) Digital marketplace services;

25 (ii) Advertising services; or

26 (iii) Storage of digital products, digital codes, computer
27 software, or master copies of software, including providing space on
28 a server for web hosting or the backing up of data or other
29 information.

30 (7) The taxes imposed under this chapter apply to successive
31 retail sales of the same property.

32 ((+7)) (8) The rates provided in this section apply to taxes
33 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

34 **Sec. 10.** RCW 82.12.0201 and 2006 c 1 s 4 are each amended to
35 read as follows:

36 (1) Beginning on December 8, 2005, 0.16 percent of the taxes
37 collected under RCW 82.12.020 based on the rate in RCW 82.08.020(1)
38 shall be dedicated to funding comprehensive performance audits under
39 RCW 43.09.470. Revenue identified in this section shall be deposited

1 in the performance audits of government account created in RCW
2 43.09.475.

3 (2) Beginning on the effective date of this section, 100 percent
4 of the taxes collected under RCW 82.12.020 based on the rate in RCW
5 82.08.020(1) on any specified use, as provided in (a) and (b) of this
6 subsection, must be deposited in the rural education and advancement
7 of distressed areas account created in section 8 of this act. For the
8 purpose of this subsection, "specified use" includes the privilege of
9 using within this state as a consumer any:

10 (a) Custom software or the customization of prewritten computer
11 software, as provided in RCW 82.04.050; or

12 (b) Of the following digital automated services, as provided in
13 RCW 82.04.192:

14 (i) Digital marketplace services;

15 (ii) Advertising services; or

16 (iii) Storage of digital products, digital codes, computer
17 software, or master copies of software, including providing space on
18 a server for web hosting or the backing up of data or other
19 information.

20 **Sec. 11.** RCW 82.04.250 and 2014 c 97 s 402 are each amended to
21 read as follows:

22 (1) Upon every person engaging within this state in the business
23 of making sales at retail, except persons taxable as retailers under
24 other provisions of this chapter, as to such persons, the amount of
25 tax with respect to such business is equal to the gross proceeds of
26 sales of the business, multiplied by the rate of 0.471 percent.

27 (2) Upon every person engaging within this state in the business
28 of making sales at retail that are exempt from the tax imposed under
29 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
30 82.08.0263, except persons taxable under RCW 82.04.260(11) or
31 subsection (3) of this section, as to such persons, the amount of tax
32 with respect to such business is equal to the gross proceeds of sales
33 of the business, multiplied by the rate of 0.484 percent.

34 (3) (a) Until July 1, 2040, upon every person classified by the
35 federal aviation administration as a federal aviation regulation part
36 145 certificated repair station and that is engaging within this
37 state in the business of making sales at retail that are exempt from
38 the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261,
39 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with

1 respect to such business is equal to the gross proceeds of sales of
2 the business, multiplied by the rate of .2904 percent.

3 (b) A person reporting under the tax rate provided in this
4 subsection (3) must file a complete annual report with the department
5 under RCW 82.32.534.

6 (4) Beginning on the effective date of this section, 100 percent
7 of the taxes collected under subsection (1) of this section must be
8 deposited in the rural education and advancement of distressed areas
9 account created in section 8 of this act, for any amount of tax due
10 with respect to the gross proceeds of sales of:

11 (a) Custom software or the customization of prewritten computer
12 software, as provided in RCW 82.04.050; or

13 (b) The following digital automated services, as provided in RCW
14 82.04.192:

15 (i) Digital marketplace services;

16 (ii) Advertising services; or

17 (iii) Storage of digital products, digital codes, computer
18 software, or master copies of software, including providing space on
19 a server for web hosting or the backing up of data or other
20 information.

21 **Sec. 12.** RCW 82.04.050 and 2021 c 4 s 3 are each amended to read
22 as follows:

23 (1)(a) "Sale at retail" or "retail sale" means every sale of
24 tangible personal property (including articles produced, fabricated,
25 or imprinted) to all persons irrespective of the nature of their
26 business and including, among others, without limiting the scope
27 hereof, persons who install, repair, clean, alter, improve,
28 construct, or decorate real or personal property of or for consumers
29 other than a sale to a person who:

30 (i) Purchases for the purpose of resale as tangible personal
31 property in the regular course of business without intervening use by
32 such person, but a purchase for the purpose of resale by a regional
33 transit authority under RCW 81.112.300 is not a sale for resale; or

34 (ii) Installs, repairs, cleans, alters, imprints, improves,
35 constructs, or decorates real or personal property of or for
36 consumers, if such tangible personal property becomes an ingredient
37 or component of such real or personal property without intervening
38 use by such person; or

1 (iii) Purchases for the purpose of consuming the property
2 purchased in producing for sale as a new article of tangible personal
3 property or substance, of which such property becomes an ingredient
4 or component or is a chemical used in processing, when the primary
5 purpose of such chemical is to create a chemical reaction directly
6 through contact with an ingredient of a new article being produced
7 for sale; or

8 (iv) Purchases for the purpose of consuming the property
9 purchased in producing ferrosilicon which is subsequently used in
10 producing magnesium for sale, if the primary purpose of such property
11 is to create a chemical reaction directly through contact with an
12 ingredient of ferrosilicon; or

13 (v) Purchases for the purpose of providing the property to
14 consumers as part of competitive telephone service, as defined in RCW
15 82.04.065; or

16 (vi) Purchases for the purpose of satisfying the person's
17 obligations under an extended warranty as defined in subsection (7)
18 of this section, if such tangible personal property replaces or
19 becomes an ingredient or component of property covered by the
20 extended warranty without intervening use by such person.

21 (b) The term includes every sale of tangible personal property
22 that is used or consumed or to be used or consumed in the performance
23 of any activity defined as a "sale at retail" or "retail sale" even
24 though such property is resold or used as provided in (a)(i) through
25 (vi) of this subsection following such use.

26 (c) The term also means every sale of tangible personal property
27 to persons engaged in any business that is taxable under RCW
28 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

29 (2) The term "sale at retail" or "retail sale" includes the sale
30 of or charge made for tangible personal property consumed and/or for
31 labor and services rendered in respect to the following:

32 (a) The installing, repairing, cleaning, altering, imprinting, or
33 improving of tangible personal property of or for consumers,
34 including charges made for the mere use of facilities in respect
35 thereto, but excluding charges made for the use of self-service
36 laundry facilities, and also excluding sales of laundry service to
37 nonprofit health care facilities, and excluding services rendered in
38 respect to live animals, birds and insects;

39 (b) The constructing, repairing, decorating, or improving of new
40 or existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching
2 of any article of tangible personal property therein or thereto,
3 whether or not such personal property becomes a part of the realty by
4 virtue of installation, and also includes the sale of services or
5 charges made for the clearing of land and the moving of earth
6 excepting the mere leveling of land used in commercial farming or
7 agriculture;

8 (c) The constructing, repairing, or improving of any structure
9 upon, above, or under any real property owned by an owner who conveys
10 the property by title, possession, or any other means to the person
11 performing such construction, repair, or improvement for the purpose
12 of performing such construction, repair, or improvement and the
13 property is then reconveyed by title, possession, or any other means
14 to the original owner;

15 (d) The cleaning, fumigating, razing, or moving of existing
16 buildings or structures, but does not include the charge made for
17 janitorial services; and for purposes of this section the term
18 "janitorial services" means those cleaning and caretaking services
19 ordinarily performed by commercial janitor service businesses
20 including, but not limited to, wall and window washing, floor
21 cleaning and waxing, and the cleaning in place of rugs, drapes and
22 upholstery. The term "janitorial services" does not include painting,
23 papering, repairing, furnace or septic tank cleaning, snow removal or
24 sandblasting;

25 (e) Automobile towing and similar automotive transportation
26 services, but not in respect to those required to report and pay
27 taxes under chapter 82.16 RCW;

28 (f) The furnishing of lodging and all other services by a hotel,
29 rooming house, tourist court, motel, trailer camp, and the granting
30 of any similar license to use real property, as distinguished from
31 the renting or leasing of real property, and it is presumed that the
32 occupancy of real property for a continuous period of one month or
33 more constitutes a rental or lease of real property and not a mere
34 license to use or enjoy the same. For the purposes of this
35 subsection, it is presumed that the sale of and charge made for the
36 furnishing of lodging for a continuous period of one month or more to
37 a person is a rental or lease of real property and not a mere license
38 to enjoy the same;

39 (g) The installing, repairing, altering, or improving of digital
40 goods for consumers;

1 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)
2 of this subsection when such sales or charges are for property, labor
3 and services which are used or consumed in whole or in part by such
4 persons in the performance of any activity defined as a "sale at
5 retail" or "retail sale" even though such property, labor and
6 services may be resold after such use or consumption. Nothing
7 contained in this subsection may be construed to modify subsection
8 (1) of this section and nothing contained in subsection (1) of this
9 section may be construed to modify this subsection.

10 (3) The term "sale at retail" or "retail sale" includes the sale
11 of or charge made for personal, business, or professional services
12 including amounts designated as interest, rents, fees, admission, and
13 other service emoluments however designated, received by persons
14 engaging in the following business activities:

15 (a) Abstract, title insurance, and escrow services;

16 (b) Credit bureau services;

17 (c) Automobile parking and storage garage services;

18 (d) Landscape maintenance and horticultural services but
19 excluding (i) horticultural services provided to farmers and (ii)
20 pruning, trimming, repairing, removing, and clearing of trees and
21 brush near electric transmission or distribution lines or equipment,
22 if performed by or at the direction of an electric utility;

23 (e) Service charges associated with tickets to professional
24 sporting events;

25 (f) The following personal services: Tanning salon services,
26 tattoo parlor services, steam bath services, turkish bath services,
27 escort services, and dating services; and

28 (g) (i) Operating an athletic or fitness facility, including all
29 charges for the use of such a facility or for any associated services
30 and amenities, except as provided in (g) (ii) of this subsection.

31 (ii) Notwithstanding anything to the contrary in (g) (i) of this
32 subsection (3), the term "sale at retail" and "retail sale" under
33 this subsection does not include:

34 (A) Separately stated charges for the use of an athletic or
35 fitness facility where such use is primarily for a purpose other than
36 engaging in or receiving instruction in a physical fitness activity;

37 (B) Separately stated charges for the use of a discrete portion
38 of an athletic or fitness facility, other than a pool, where such
39 discrete portion of the facility does not by itself meet the
40 definition of "athletic or fitness facility" in this subsection;

1 (C) Separately stated charges for services, such as advertising,
2 massage, nutritional consulting, and body composition testing, that
3 do not require the customer to engage in physical fitness activities
4 to receive the service. The exclusion in this subsection
5 (3)(g)(ii)(C) does not apply to personal training services and
6 instruction in a physical fitness activity;

7 (D) Separately stated charges for physical therapy provided by a
8 physical therapist, as those terms are defined in RCW 18.74.010, or
9 occupational therapy provided by an occupational therapy
10 practitioner, as those terms are defined in RCW 18.59.020, when
11 performed pursuant to a referral from an authorized health care
12 practitioner or in consultation with an authorized health care
13 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
14 authorized health care practitioner means a health care practitioner
15 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.71, or 18.71A
16 RCW, or, until July 1, 2022, chapter 18.57A RCW;

17 (E) Rent or association fees charged by a landlord or residential
18 association to a tenant or residential owner with access to an
19 athletic or fitness facility maintained by the landlord or
20 residential association, unless the rent or fee varies depending on
21 whether the tenant or owner has access to the facility;

22 (F) Services provided in the regular course of employment by an
23 employee with access to an athletic or fitness facility maintained by
24 the employer for use without charge by its employees or their family
25 members;

26 (G) The provision of access to an athletic or fitness facility by
27 an educational institution to its students and staff. However,
28 charges made by an educational institution to its alumni or other
29 members of the public for the use of any of the educational
30 institution's athletic or fitness facilities are a retail sale under
31 this subsection (3)(g). For purposes of this subsection
32 (3)(g)(ii)(G), "educational institution" has the same meaning as in
33 RCW 82.04.170;

34 (H) Yoga, chi gong, or martial arts classes, training, or events
35 held at a community center, park, school gymnasium, college or
36 university, hospital or other medical facility, private residence, or
37 any other facility that is not operated within and as part of an
38 athletic or fitness facility.

39 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
40 to affect the taxation of sales made by the operator of an athletic

1 or fitness facility, where such sales are defined as a retail sale
2 under any provision of this section other than this subsection (3).

3 (iv) For the purposes of this subsection (3)(g), the following
4 definitions apply:

5 (A) "Athletic or fitness facility" means an indoor or outdoor
6 facility or portion of a facility that is primarily used for:
7 Exercise classes; strength and conditioning programs; personal
8 training services; tennis, racquetball, handball, squash, or
9 pickleball; or other activities requiring the use of exercise or
10 strength training equipment, such as treadmills, elliptical machines,
11 stair climbers, stationary cycles, rowing machines, pilates
12 equipment, balls, climbing ropes, jump ropes, and weightlifting
13 equipment.

14 (B) "Martial arts" means any of the various systems of training
15 for physical combat or self-defense. "Martial arts" includes, but is
16 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,
17 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,
18 Kendo, tai chi, and mixed martial arts.

19 (C) "Physical fitness activities" means activities that involve
20 physical exertion for the purpose of improving or maintaining the
21 general fitness, strength, flexibility, conditioning, or health of
22 the participant. "Physical fitness activities" includes participating
23 in yoga, chi gong, or martial arts.

24 (4)(a) The term also includes the renting or leasing of tangible
25 personal property to consumers.

26 (b) The term does not include the renting or leasing of tangible
27 personal property where the lease or rental is for the purpose of
28 sublease or subrent.

29 (5) The term also includes the providing of "competitive
30 telephone service," "telecommunications service," or "ancillary
31 services," as those terms are defined in RCW 82.04.065, to consumers.

32 (6)(a) The term also includes the sale of prewritten computer
33 software to a consumer, regardless of the method of delivery to the
34 end user. For purposes of (a) (~~and (b)~~) of this subsection, the
35 sale of prewritten computer software includes the sale of or charge
36 made for a key or an enabling or activation code, where the key or
37 code is required to activate prewritten computer software and put the
38 software into use. There is no separate sale of the key or code from
39 the prewritten computer software, regardless of how the sale may be
40 characterized by the vendor or by the purchaser.

1 (b) The term "retail sale" (~~does not include~~) includes the sale
2 of or charge made for:

3 (i) Custom software; or

4 (ii) The customization of prewritten computer software.

5 (c)(i) The term also includes the charge made to consumers for
6 the right to access and use prewritten computer software, where
7 possession of the software is maintained by the seller or a third
8 party, regardless of whether the charge for the service is on a per
9 use, per user, per license, subscription, or some other basis.

10 (ii)(A) The service described in (c)(i) of this subsection (6)
11 includes the right to access and use prewritten computer software to
12 perform data processing.

13 (B) For purposes of this subsection (6)(c)(ii), "data processing"
14 means the systematic performance of operations on data to extract the
15 required information in an appropriate form or to convert the data to
16 usable information. Data processing includes check processing, image
17 processing, form processing, survey processing, payroll processing,
18 claim processing, and similar activities.

19 (7) The term also includes the sale of or charge made for an
20 extended warranty to a consumer. For purposes of this subsection,
21 "extended warranty" means an agreement for a specified duration to
22 perform the replacement or repair of tangible personal property at no
23 additional charge or a reduced charge for tangible personal property,
24 labor, or both, or to provide indemnification for the replacement or
25 repair of tangible personal property, based on the occurrence of
26 specified events. The term "extended warranty" does not include an
27 agreement, otherwise meeting the definition of extended warranty in
28 this subsection, if no separate charge is made for the agreement and
29 the value of the agreement is included in the sales price of the
30 tangible personal property covered by the agreement. For purposes of
31 this subsection, "sales price" has the same meaning as in RCW
32 82.08.010.

33 (8)(a) The term also includes the following sales to consumers of
34 digital goods, digital codes, and digital automated services:

35 (i) Sales in which the seller has granted the purchaser the right
36 of permanent use;

37 (ii) Sales in which the seller has granted the purchaser a right
38 of use that is less than permanent;

39 (iii) Sales in which the purchaser is not obligated to make
40 continued payment as a condition of the sale; and

1 (iv) Sales in which the purchaser is obligated to make continued
2 payment as a condition of the sale.

3 (b) A retail sale of digital goods, digital codes, or digital
4 automated services under this subsection (8) includes any services
5 provided by the seller exclusively in connection with the digital
6 goods, digital codes, or digital automated services, whether or not a
7 separate charge is made for such services.

8 (c) For purposes of this subsection, "permanent" means perpetual
9 or for an indefinite or unspecified length of time. A right of
10 permanent use is presumed to have been granted unless the agreement
11 between the seller and the purchaser specifies or the circumstances
12 surrounding the transaction suggest or indicate that the right to use
13 terminates on the occurrence of a condition subsequent.

14 (9) The term also includes the charge made for providing tangible
15 personal property along with an operator for a fixed or indeterminate
16 period of time. A consideration of this is that the operator is
17 necessary for the tangible personal property to perform as designed.
18 For the purpose of this subsection (9), an operator must do more than
19 maintain, inspect, or set up the tangible personal property.

20 (10) The term does not include the sale of or charge made for
21 labor and services rendered in respect to the building, repairing, or
22 improving of any street, place, road, highway, easement, right-of-
23 way, mass public transportation terminal or parking facility, bridge,
24 tunnel, or trestle which is owned by a municipal corporation or
25 political subdivision of the state or by the United States and which
26 is used or to be used primarily for foot or vehicular traffic
27 including mass transportation vehicles of any kind.

28 (11) The term also does not include sales of chemical sprays or
29 washes to persons for the purpose of postharvest treatment of fruit
30 for the prevention of scald, fungus, mold, or decay, nor does it
31 include sales of feed, seed, seedlings, fertilizer, agents for
32 enhanced pollination including insects such as bees, and spray
33 materials to: (a) Persons who participate in the federal conservation
34 reserve program, the environmental quality incentives program, the
35 wetlands reserve program, and the wildlife habitat incentives
36 program, or their successors administered by the United States
37 department of agriculture; (b) farmers for the purpose of producing
38 for sale any agricultural product; (c) farmers for the purpose of
39 providing bee pollination services; and (d) farmers acting under
40 cooperative habitat development or access contracts with an

1 organization exempt from federal income tax under 26 U.S.C. Sec.
2 501(c)(3) of the federal internal revenue code or the Washington
3 state department of fish and wildlife to produce or improve wildlife
4 habitat on land that the farmer owns or leases.

5 (12) The term does not include the sale of or charge made for
6 labor and services rendered in respect to the constructing,
7 repairing, decorating, or improving of new or existing buildings or
8 other structures under, upon, or above real property of or for the
9 United States, any instrumentality thereof, or a county or city
10 housing authority created pursuant to chapter 35.82 RCW, including
11 the installing, or attaching of any article of tangible personal
12 property therein or thereto, whether or not such personal property
13 becomes a part of the realty by virtue of installation. Nor does the
14 term include the sale of services or charges made for the clearing of
15 land and the moving of earth of or for the United States, any
16 instrumentality thereof, or a county or city housing authority. Nor
17 does the term include the sale of services or charges made for
18 cleaning up for the United States, or its instrumentalities,
19 radioactive waste and other by-products of weapons production and
20 nuclear research and development.

21 (13) The term does not include the sale of or charge made for
22 labor, services, or tangible personal property pursuant to agreements
23 providing maintenance services for bus, rail, or rail fixed guideway
24 equipment when a regional transit authority is the recipient of the
25 labor, services, or tangible personal property, and a transit agency,
26 as defined in RCW 81.104.015, performs the labor or services.

27 (14) The term does not include the sale for resale of any service
28 described in this section if the sale would otherwise constitute a
29 "sale at retail" and "retail sale" under this section.

30 (15)(a) The term "sale at retail" or "retail sale" includes
31 amounts charged, however labeled, to consumers to engage in any of
32 the activities listed in this subsection (15)(a), including the
33 furnishing of any associated equipment or, except as otherwise
34 provided in this subsection, providing instruction in such
35 activities, where such charges are not otherwise defined as a "sale
36 at retail" or "retail sale" in this section:

37 (i)(A) Golf, including any variant in which either golf balls or
38 golf clubs are used, such as miniature golf, hitting golf balls at a
39 driving range, and golf simulators, and including fees charged by a
40 golf course to a player for using his or her own cart. However,

1 charges for golf instruction are not a retail sale, provided that if
2 the instruction involves the use of a golfing facility that would
3 otherwise require the payment of a fee, such as green fees or driving
4 range fees, such fees, including the applicable retail sales tax,
5 must be separately identified and charged by the golfing facility
6 operator to the instructor or the person receiving the instruction.

7 (B) Notwithstanding (a) (i) (A) of this subsection (15) and except
8 as otherwise provided in this subsection (15) (a) (i) (B), the term
9 "sale at retail" or "retail sale" does not include amounts charged to
10 participate in, or conduct, a golf tournament or other competitive
11 event. However, amounts paid by event participants to the golf
12 facility operator are retail sales under this subsection (15) (a) (i).
13 Likewise, amounts paid by the event organizer to the golf facility
14 are retail sales under this subsection (15) (a) (i), if such amounts
15 vary based on the number of event participants;

16 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,
17 paragliding, parasailing, and similar activities;

18 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
19 ping pong, and similar games;

20 (iv) Access to amusement park, theme park, and water park
21 facilities, including but not limited to charges for admission and
22 locker or cabana rentals. Discrete charges for rides or other
23 attractions or entertainment that are in addition to the charge for
24 admission are not a retail sale under this subsection (15) (a) (iv).
25 For the purposes of this subsection, an amusement park or theme park
26 is a location that provides permanently affixed amusement rides,
27 games, and other entertainment, but does not include parks or zoos
28 for which the primary purpose is the exhibition of wildlife, or
29 fairs, carnivals, and festivals as defined in (b) (i) of this
30 subsection;

31 (v) Batting cage activities;

32 (vi) Bowling, but not including competitive events, except that
33 amounts paid by the event participants to the bowling alley operator
34 are retail sales under this subsection (15) (a) (vi). Likewise, amounts
35 paid by the event organizer to the operator of the bowling alley are
36 retail sales under this subsection (15) (a) (vi), if such amounts vary
37 based on the number of event participants;

38 (vii) Climbing on artificial climbing structures, whether indoors
39 or outdoors;

40 (viii) Day trips for sightseeing purposes;

1 (ix) Bungee jumping, zip lining, and riding inside a ball,
2 whether inflatable or otherwise;

3 (x) Horseback riding offered to the public, where the seller
4 furnishes the horse to the buyer and providing instruction is not the
5 primary focus of the activity, including guided rides, but not
6 including therapeutic horseback riding provided by an instructor
7 certified by a nonprofit organization that offers national or
8 international certification for therapeutic riding instructors;

9 (xi) Fishing, including providing access to private fishing areas
10 and charter or guided fishing, except that fishing contests and
11 license fees imposed by a government entity are not a retail sale
12 under this subsection;

13 (xii) Guided hunting and hunting at game farms and shooting
14 preserves, except that hunting contests and license fees imposed by a
15 government entity are not a retail sale under this subsection;

16 (xiii) Swimming, but only in respect to (A) recreational or
17 fitness swimming that is open to the public, such as open swim, lap
18 swimming, and special events like kids night out and pool parties
19 during open swim time, and (B) pool parties for private events, such
20 as birthdays, family gatherings, and employee outings. Fees for
21 swimming lessons, to participate in swim meets and other
22 competitions, or to join a swim team, club, or aquatic facility are
23 not retail sales under this subsection (15) (a) (xiii);

24 (xiv) Go-karting, bumper cars, and other motorized activities
25 where the seller provides the vehicle and the premises where the
26 buyer will operate the vehicle;

27 (xv) Indoor or outdoor playground activities, such as inflatable
28 bounce structures and other inflatables; mazes; trampolines; slides;
29 ball pits; games of tag, including laser tag and soft-dart tag; and
30 human gyroscope rides, regardless of whether such activities occur at
31 the seller's place of business, but not including playground
32 activities provided for children by a licensed child day care center
33 or licensed family day care provider as those terms are defined in
34 RCW 43.216.010;

35 (xvi) Shooting sports and activities, such as target shooting,
36 skeet, trap, sporting clays, "5" stand, and archery, but only in
37 respect to discrete charges to members of the public to engage in
38 these activities, but not including fees to enter a competitive
39 event, instruction that is entirely or predominately classroom based,
40 or to join or renew a membership at a club, range, or other facility;

1 (xvii) Paintball and airsoft activities;

2 (xviii) Skating, including ice skating, roller skating, and
3 inline skating, but only in respect to discrete charges to members of
4 the public to engage in skating activities, but not including skating
5 lessons, competitive events, team activities, or fees to join or
6 renew a membership at a skating facility, club, or other
7 organization;

8 (xix) Nonmotorized snow sports and activities, such as downhill
9 and cross-country skiing, snowboarding, ski jumping, sledding, snow
10 tubing, snowshoeing, and similar snow sports and activities, whether
11 engaged in outdoors or in an indoor facility with or without snow,
12 but only in respect to discrete charges to the public for the use of
13 land or facilities to engage in nonmotorized snow sports and
14 activities, such as fees, however labeled, for the use of ski lifts
15 and tows and daily or season passes for access to trails or other
16 areas where nonmotorized snow sports and activities are conducted.
17 However, fees for the following are not retail sales under this
18 subsection (15) (a) (xix): (A) Instructional lessons; (B) permits
19 issued by a governmental entity to park a vehicle on or access public
20 lands; and (C) permits or leases granted by an owner of private
21 timberland for recreational access to areas used primarily for
22 growing and harvesting timber; and

23 (xx) Scuba diving; snorkeling; river rafting; surfing;
24 kiteboarding; flyboarding; water slides; inflatables, such as water
25 pillows, water trampolines, and water rollers; and similar water
26 sports and activities.

27 (b) Notwithstanding anything to the contrary in this subsection
28 (15), the term "sale at retail" or "retail sale" does not include
29 charges:

30 (i) Made for admission to, and rides or attractions at, fairs,
31 carnivals, and festivals. For the purposes of this subsection, fairs,
32 carnivals, and festivals are events that do not exceed twenty-one
33 days and a majority of the amusement rides, if any, are not affixed
34 to real property;

35 (ii) Made by an educational institution to its students and staff
36 for activities defined as retail sales by (a) (i) through (xx) of this
37 subsection. However, charges made by an educational institution to
38 its alumni or other members of the general public for these
39 activities are a retail sale under this subsection (15). For purposes

1 of this subsection (15)(b)(ii), "educational institution" has the
2 same meaning as in RCW 82.04.170;

3 (iii) Made by a vocational school for commercial diver training
4 that is licensed by the workforce training and education coordinating
5 board under chapter 28C.10 RCW; or

6 (iv) Made for day camps offered by a nonprofit organization or
7 state or local governmental entity that provide youth not older than
8 age eighteen, or that are focused on providing individuals with
9 disabilities or mental illness, the opportunity to participate in a
10 variety of supervised activities.

11 (16)(a) The term "sale at retail" or "retail sale" includes the
12 purchase or acquisition of tangible personal property and specified
13 services by a person who receives a qualifying grant exempt from tax
14 under RCW 82.04.--- (section 1, chapter 4, Laws of 2021) or 82.16.---
15 (section 2, chapter 4, Laws of 2021), except for transactions
16 excluded from the definition of "sale at retail" or "retail sale" by
17 any other provision of this section. Nothing in this subsection (16)
18 may be construed to limit the application of any other provision of
19 this section to purchases by a recipient of a qualifying grant exempt
20 from tax under RCW 82.04.--- (section 1, chapter 4, Laws of 2021) or
21 by any other person.

22 (b) For purposes of this subsection (16), "specified services"
23 means:

24 (i) The constructing, repairing, decorating, or improving of new
25 or existing buildings or other structures under, upon, or above real
26 property, including the installing or attaching of any article of
27 tangible personal property therein or thereto, whether or not such
28 personal property becomes a part of the realty by virtue of
29 installation;

30 (ii) The clearing of land or the moving of earth, whether or not
31 associated with activities described in (b)(i) of this subsection
32 (16);

33 (iii) The razing or moving of existing buildings or structures;
34 and

35 (iv) Landscape maintenance and horticultural services.

36 **Sec. 13.** RCW 82.04.192 and 2020 c 139 s 4 are each amended to
37 read as follows:

1 (1) "Digital audio works" means works that result from the
2 fixation of a series of musical, spoken, or other sounds, including
3 ringtones.

4 (2) "Digital audiovisual works" means a series of related images
5 which, when shown in succession, impart an impression of motion,
6 together with accompanying sounds, if any.

7 (3)(a) "Digital automated service," except as provided in (b) of
8 this subsection (3), means any service transferred electronically
9 that uses one or more software applications.

10 (b) "Digital automated service" does not include:

11 (i) Any service that primarily involves the application of human
12 effort by the seller, and the human effort originated after the
13 customer requested the service;

14 (ii) The loaning or transferring of money or the purchase, sale,
15 or transfer of financial instruments. For purposes of this subsection
16 (3)(b)(ii), "financial instruments" include cash, accounts receivable
17 and payable, loans and notes receivable and payable, debt securities,
18 equity securities, as well as derivative contracts such as forward
19 contracts, swap contracts, and options;

20 (iii) Dispensing cash or other physical items from a machine;

21 (iv) Payment processing services;

22 (v) Parimutuel wagering and handicapping contests as authorized
23 by chapter 67.16 RCW;

24 (vi) Telecommunications services and ancillary services as those
25 terms are defined in RCW 82.04.065;

26 (vii) The internet and internet access as those terms are defined
27 in RCW 82.04.297;

28 (viii) The service described in RCW 82.04.050(6)(c);

29 (ix) Online educational programs provided by a:

30 (A) Public or private elementary or secondary school; or

31 (B) An institution of higher education as defined in sections
32 1001 or 1002 of the federal higher education act of 1965 (Title 20
33 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For
34 purposes of this subsection (3)(b)(ix)(B), an online educational
35 program must be encompassed within the institution's accreditation;

36 (x) Live presentations, such as lectures, seminars, workshops, or
37 courses, where participants are connected to other participants via
38 the internet or telecommunications equipment, which allows audience
39 members and the presenter or instructor to give, receive, and discuss
40 information with each other in real time;

1 (xi) Travel agent services, including online travel services, and
2 automated systems used by travel agents to book reservations;

3 ~~(xii) ((A) A service that allows the person receiving the service
4 to make online sales of products or services, digital or otherwise,
5 using either: (I) The service provider's website; or (II) the service
6 recipient's website, but only when the service provider's technology
7 is used in creating or hosting the service recipient's website or is
8 used in processing orders from customers using the service
9 recipient's website.~~

10 ~~(B) The service described in this subsection (3) (b) (xii) does not
11 include the underlying sale of the products or services, digital or
12 otherwise, by the person receiving the service;~~

13 ~~(xiii) Advertising services. For purposes of this subsection
14 (3) (b) (xiii), "advertising services" means all services directly
15 related to the creation, preparation, production, or the
16 dissemination of advertisements. Advertising services include layout,
17 art direction, graphic design, mechanical preparation, production
18 supervision, placement, and rendering advice to a client concerning
19 the best methods of advertising that client's products or services.
20 Advertising services also include online referrals, search engine
21 marketing and lead generation optimization, web campaign planning,
22 the acquisition of advertising space in the internet media, and the
23 monitoring and evaluation of website traffic for purposes of
24 determining the effectiveness of an advertising campaign. Advertising
25 services do not include web hosting services and domain name
26 registration;~~

27 ~~(xiv) The mere storage of digital products, digital codes,
28 computer software, or master copies of software. This exclusion from
29 the definition of digital automated services includes providing space
30 on a server for web hosting or the backing up of data or other
31 information;~~

32 ~~(xv))~~ Data processing services. For purposes of this subsection
33 (3) (b) ~~((xv))~~ (xii), "data processing service" means a primarily
34 automated service provided to a business or other organization where
35 the primary object of the service is the systematic performance of
36 operations by the service provider on data supplied in whole or in
37 part by the customer to extract the required information in an
38 appropriate form or to convert the data to usable information. Data
39 processing services include check processing, image processing, form
40 processing, survey processing, payroll processing, claim processing,

1 and similar activities. Data processing does not include the service
2 described in RCW 82.04.050(6)(c); and

3 ~~((xvi))~~ (xiii) Digital goods.

4 (c) "Digital automated service" includes:

5 (i)(A) Digital marketplace services that allow the person
6 receiving the service to make online sales of products or services,
7 digital or otherwise, using either: (I) The service provider's
8 website; or (II) the service recipient's website, but only when the
9 service provider's technology is used in creating or hosting the
10 service recipient's website or is used in processing orders from
11 customers using the service recipient's website.

12 (B) The service described in this subsection (3)(c) does not
13 include the underlying sale of the products or services, digital or
14 otherwise, by the person receiving the service;

15 (ii) Advertising services. For purposes of this subsection
16 (3)(c)(ii), "advertising services" means all services directly
17 related to the creation, preparation, production, or the
18 dissemination of advertisements. "Advertising services" includes
19 layout, art direction, graphic design, mechanical preparation,
20 production supervision, placement, and rendering advice to a client
21 concerning the best methods of advertising that client's products or
22 services. "Advertising services" also includes online referrals,
23 search engine marketing and lead generation optimization, web
24 campaign planning, the acquisition of advertising space in the
25 internet media, and the monitoring and evaluation of website traffic
26 for purposes of determining the effectiveness of an advertising
27 campaign. "Advertising services" does not include web hosting
28 services and domain name registration; and

29 (iii) The mere storage of digital products, digital codes,
30 computer software, or master copies of software, including providing
31 space on a server for web hosting or the backing up of data or other
32 information.

33 (4) "Digital books" means works that are generally recognized in
34 the ordinary and usual sense as books.

35 (5) "Digital code" means a code that provides a purchaser with
36 the right to obtain one or more digital products, if all of the
37 digital products to be obtained through the use of the code have the
38 same sales and use tax treatment. "Digital code" does not include a
39 code that represents a stored monetary value that is deducted from a
40 total as it is used by the purchaser. "Digital code" also does not

1 include a code that represents a redeemable card, gift card, or gift
2 certificate that entitles the holder to select digital products of an
3 indicated cash value. A digital code may be obtained by any means,
4 including email or by tangible means regardless of its designation as
5 song code, video code, book code, or some other term.

6 (6) (a) "Digital goods," except as provided in (b) of this
7 subsection (6), means sounds, images, data, facts, or information, or
8 any combination thereof, transferred electronically, including, but
9 not limited to, specified digital products and other products
10 transferred electronically not included within the definition of
11 specified digital products.

12 (b) The term "digital goods" does not include:

13 (i) Telecommunications services and ancillary services as those
14 terms are defined in RCW 82.04.065;

15 (ii) Computer software as defined in RCW 82.04.215;

16 (iii) The internet and internet access as those terms are defined
17 in RCW 82.04.297;

18 (iv) (A) Except as provided in (b) (iv) (B) of this subsection (6),
19 the representation of a personal or professional service in
20 electronic form, such as an electronic copy of an engineering report
21 prepared by an engineer, where the service primarily involves the
22 application of human effort by the service provider, and the human
23 effort originated after the customer requested the service.

24 (B) The exclusion in (b) (iv) (A) of this subsection (6) does not
25 apply to photographers in respect to amounts received for the taking
26 of photographs that are transferred electronically to the customer,
27 but only if the customer is an end user, as defined in RCW
28 82.04.190(11), of the photographs. Such amounts are considered to be
29 for the sale of digital goods; and

30 (v) Services and activities excluded from the definition of
31 digital automated services in subsection (3) (b) (i) through (xv) of
32 this section and not otherwise described in (b) (i) through (iv) of
33 this subsection (6).

34 (7) "Digital products" means digital goods and digital automated
35 services.

36 (8) "Electronically transferred" or "transferred electronically"
37 means obtained by the purchaser by means other than tangible storage
38 media. It is not necessary that a copy of the product be physically
39 transferred to the purchaser. So long as the purchaser may access the

1 product, it will be considered to have been electronically
2 transferred to the purchaser.

3 (9) "Specified digital products" means electronically transferred
4 digital audiovisual works, digital audio works, and digital books.

5 (10) "Subscription radio services" means the sale of audio
6 programming by a radio broadcaster as defined in RCW 82.08.0208,
7 except as otherwise provided in this subsection. "Subscription radio
8 services" does not include audio programming that is sold on a pay-
9 per-program basis or that allows the buyer to access a library of
10 programs at any time for a specific charge for that service.

11 (11) "Subscription television services" means the sale of video
12 programming by a television broadcaster as defined in RCW 82.08.0208,
13 except as otherwise provided in this subsection. "Subscription
14 television services" does not include video programming that is sold
15 on a pay-per-program basis or that allows the buyer to access a
16 library of programs at any time for a specific charge for that
17 service, but only if the seller is not subject to a franchise fee in
18 this state under the authority of Title 47 U.S.C. Sec. 542(a) on the
19 gross revenue derived from the sale.

20 NEW SECTION. **Sec. 14.** Sections 7 through 13 of this act take
21 effect January 1, 2022."

22 Renumber the remaining section consecutively, correct any
23 internal references accordingly, and correct the title.

EFFECT: (1) Creates the Rural Education and Advancement of
Distressed Areas Grant Program (READ Grant Program) in the Department
of Commerce. Provides that READ Grants may be provided to local
governments, or entities who have entered into an agreement with a
local government, to fund programs that bridge the digital divide
through increasing broadband access and adoption. Provides that READ
Grants may be awarded to assist in funding acquisition, installation,
and construction of middle mile and last mile infrastructure that
supports fiber broadband services and to assist in funding strategic
planning for deploying broadband service in rural and distressed
areas. Provides that availability of READ Grant amounts is subject to
appropriation for that purpose. Provides that Commerce must evaluate
applications using objective criteria established by the Statewide
Broadband Office.

(2) Expands the sales and use taxes and business and occupation
tax to apply to retail sales of custom computer software, digital
marketplace services, advertising services, and digital storage and
hosting.

(3) Creates the Rural Education and Advancement of Distressed
Areas Account and provides that receipts from the expansion of taxes

listed above are deposited into the account and expenditures for the READ Grant Program are made from the account.

(4) Provides a January 1, 2022, effective date for the provisions in the amendment.

--- **END** ---