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**SENATE BILL 5096**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Robinson, Hunt, Nguyen, and Wilson, C.; by request of Office of Financial Management

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1 AN ACT Relating to enacting an excise tax on gains from the sale  
2 or exchange of certain capital assets; amending RCW 82.32.655; adding  
3 a new section to chapter 82.04 RCW; adding a new section to chapter  
4 82.32 RCW; adding a new chapter to Title 82 RCW; creating new  
5 sections; prescribing penalties; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires  
9 otherwise.

10 (1) "Accessory dwelling unit" means a separate habitable living  
11 area that is subordinate to the principal single-family dwelling  
12 unit, which is either internal to, attached to, or located on the  
13 same property tax parcel as, the principal single-family dwelling  
14 unit.

15 (2) "Adjusted capital gain" means federal net long-term capital  
16 gain:

17 (a) Plus any amount of long-term capital loss from a sale or  
18 exchange that is exempt from the tax imposed in this chapter, to the  
19 extent such loss was included in calculating federal net long-term  
20 capital gain;

1 (b) Plus any amount of long-term capital loss from a sale or  
2 exchange that is not allocated to Washington under section 7 of this  
3 act, to the extent such loss was included in calculating federal net  
4 long-term capital gain;

5 (c) Plus any amount of loss carryforward from a sale or exchange  
6 that is not allocated to Washington under section 7 of this act, to  
7 the extent such loss was included in calculating federal net long-  
8 term capital gain;

9 (d) Less any amount of long-term capital gain from a sale or  
10 exchange that is not allocated to Washington under section 7 of this  
11 act, to the extent such gain was included in calculating federal net  
12 long-term capital gain; and

13 (e) Less any amount of long-term capital gain from a sale or  
14 exchange that is exempt from the tax imposed in this chapter, to the  
15 extent such gain was included in calculating federal net long-term  
16 capital gain.

17 (3) "Capital asset" has the same meaning as provided by Title 26  
18 U.S.C. Sec. 1221 of the internal revenue code and also includes any  
19 other property if the sale or exchange of the property results in a  
20 gain that is treated as a long-term capital gain under Title 26  
21 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

22 (4) "Federal net long-term capital gain" means the net long-term  
23 capital gain reportable for federal income tax purposes determined as  
24 if Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 of the internal revenue  
25 code did not exist.

26 (5) "Individual" means a natural person.

27 (6) "Internal revenue code" means the United States internal  
28 revenue code of 1986, as amended, as of the effective date of this  
29 section, or such subsequent date as the department may provide by  
30 rule consistent with the purpose of this chapter.

31 (7) "Long-term capital asset" means a capital asset that is held  
32 for more than one year.

33 (8) "Long-term capital gain" means gain from the sale or exchange  
34 of a long-term capital asset.

35 (9) "Long-term capital loss" means a loss from the sale or  
36 exchange of a long-term capital asset.

37 (10)(a) "Resident" means an individual:

38 (i) Who is domiciled in this state during the taxable year,  
39 unless the individual (A) maintained no permanent place of abode in  
40 this state during the entire taxable year, (B) maintained a permanent

1 place of abode outside of this state during the entire taxable year,  
2 and (C) spent in the aggregate not more than 30 days of the taxable  
3 year in this state; or

4 (ii) Who is not domiciled in this state during the taxable year,  
5 but maintained a place of abode and was physically present in this  
6 state for more than 183 days during the taxable year.

7 (b) For purposes of this subsection, "day" includes any portion  
8 of a day, except that a continuous period of 24 hours or less may not  
9 constitute more than one day.

10 (c) An individual who is a resident under (a) of this subsection  
11 is a resident for that portion of a taxable year in which the  
12 individual was domiciled in this state or maintained a place of abode  
13 in this state.

14 (11) "Taxable year" means the taxpayer's taxable year as  
15 determined under the internal revenue code.

16 (12) "Taxpayer" means an individual subject to tax under this  
17 chapter.

18 (13) "Washington capital gains" means an individual's adjusted  
19 capital gains, less:

20 (a) \$25,000; or

21 (b) \$50,000 for individuals filing joint returns under this  
22 chapter.

23 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2022, an excise  
24 tax is imposed on the sale or exchange of long-term capital assets.  
25 Only individuals are subject to payment of the tax, which equals nine  
26 percent multiplied by an individual's Washington capital gains.

27 (2) If an individual's Washington capital gains are less than  
28 zero for a taxable year, no tax is due under this section. No such  
29 losses may be carried back or carried forward to another taxable  
30 year. An individual may not adjust prior year Washington capital  
31 gains for losses carried back for federal income tax purposes.

32 (3) (a) The tax imposed in this section applies to the sale or  
33 exchange of long-term capital assets owned by the taxpayer, whether  
34 the taxpayer was the legal or a beneficial owner of such assets at  
35 the time of the sale or exchange. The tax applies when the Washington  
36 capital gains are recognized by the taxpayer in accordance with this  
37 chapter.

38 (b) For purposes of this chapter, an individual is considered to  
39 be a beneficial owner of long-term capital assets held by an entity

1 that is a pass-through or disregarded entity for federal tax  
2 purposes, such as a partnership, limited liability company, S  
3 corporation, or trust, to the extent of the individual's ownership  
4 interest in the entity as reported for federal income tax purposes.

5 NEW SECTION. **Sec. 3.** This chapter does not apply to the sale or  
6 exchange of:

7 (1) Any residential dwelling along with the land upon which the  
8 dwelling is located. For the purposes of this subsection (1),  
9 "residential dwelling" means property consisting solely of (a) a  
10 single-family residence, a residential condominium unit, or a  
11 residential cooperative unit, including any accessory dwelling unit  
12 associated with such residence or residential unit; (b) a multifamily  
13 residential building consisting of one or more common walls and fewer  
14 than four units; or (c) a floating home as defined in RCW 82.45.032;

15 (2) Assets held under a retirement savings account under Title 26  
16 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered  
17 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)  
18 of the internal revenue code, a deferred compensation plan under  
19 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
20 individual retirement account or individual retirement annuity  
21 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
22 Roth individual retirement account described in Title 26 U.S.C. Sec.  
23 408A of the internal revenue code, an employee defined contribution  
24 program, an employee defined benefit plan, or a similar retirement  
25 savings vehicle;

26 (3) Assets pursuant to, or under imminent threat of, condemnation  
27 proceedings by the United States, the state or any of its political  
28 subdivisions, or a municipal corporation;

29 (4) Cattle, horses, or breeding livestock held for more than 12  
30 months if for the taxable year of the sale or exchange, more than 50  
31 percent of the taxpayer's gross income for the taxable year,  
32 including from the sale or exchange of capital assets, is from  
33 farming or ranching;

34 (5) Agricultural land by an individual who has regular,  
35 continuous, and substantial involvement in the operation of the  
36 agriculture that meets the criteria for material participation in an  
37 activity under Title 26 U.S.C. Sec. 469(h) of the internal revenue  
38 code for the 10 years prior to the date of the sale or exchange of  
39 the agricultural land;

1 (6) Property used in a trade or business if the property is  
2 depreciable under Title 26 U.S.C. Sec. 167 of the internal revenue  
3 code, or qualifies for expensing under Title 26 U.S.C. Sec. 179 of  
4 the internal revenue code; and

5 (7) Timber, timberland, or the receipt of Washington capital  
6 gains as dividends and distributions from real estate investment  
7 trusts derived from gains from the sale or exchange of timber and  
8 timberland. "Timber" means forest trees, standing or down, on  
9 privately or publicly owned land, and includes Christmas trees and  
10 short-rotation hardwoods. The sale or exchange of timber includes the  
11 cutting or disposal of timber qualifying for capital gains treatment  
12 under Title 26 U.S.C. Sec. 631 (a) or (b) of the internal revenue  
13 code.

14 NEW SECTION. **Sec. 4.** The tax imposed under this chapter is in  
15 addition to any other taxes imposed by the state or any of its  
16 political subdivisions, or a municipal corporation, with respect to  
17 the same sale or exchange, including the taxes imposed in or under  
18 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46  
19 RCW.

20 NEW SECTION. **Sec. 5.** In computing tax, there may be deducted  
21 from the measure of tax amounts that the state is prohibited from  
22 taxing under the Constitution of this state or the Constitution or  
23 laws of the United States.

24 NEW SECTION. **Sec. 6.** (1) A sole proprietor may deduct from the  
25 measure of tax imposed under this chapter the amounts of adjusted  
26 capital gains from the sale of long-term capital assets acquired and  
27 used only for purposes of the trade or business of the sole  
28 proprietor.

29 (2) The deduction claimed under subsection (1) of this section  
30 may not reduce a sole proprietor's Washington capital gains below  
31 zero.

32 (3) The amount of the adjusted capital gains deducted under  
33 subsection (1) of this section may not exceed the sole proprietor's  
34 net income reported for federal income tax purposes for the taxable  
35 year in which the adjusted capital gains are recognized.

1        NEW SECTION.    **Sec. 7.**    (1) For purposes of the tax imposed under  
2 this chapter, long-term capital gains and losses are allocated to  
3 Washington as follows:

4        (a) Long-term capital gains or losses from the sale or exchange  
5 of real property are allocated to this state if the real property is  
6 located in this state or a majority of the fair market value of the  
7 real property is located in this state.

8        (b) Long-term capital gains or losses from the sale or exchange  
9 of tangible personal property are allocated to this state if the  
10 property was located in this state at the time of the sale or  
11 exchange. Adjusted capital gains from the sale or exchange of  
12 tangible personal property are also allocated to this state even  
13 though the property was not located in this state at the time of the  
14 sale or exchange if:

15        (i) The property was located in the state at any time during the  
16 taxable year in which the sale or exchange occurred or the  
17 immediately preceding taxable year;

18        (ii) The taxpayer was a resident at the time the sale or exchange  
19 occurred; and

20        (iii) The taxpayer is not subject to the payment of an income or  
21 excise tax legally imposed on the adjusted capital gains by another  
22 taxing jurisdiction.

23        (c) Long-term capital gains or losses derived from intangible  
24 personal property are allocated to this state if the taxpayer was  
25 domiciled in this state at the time the sale or exchange occurred.

26        (2)(a) A credit is allowed against the tax imposed in section 2  
27 of this act equal to the amount of any legally imposed income or  
28 excise tax paid by the taxpayer to another taxing jurisdiction on  
29 capital gains derived from capital assets within the other taxing  
30 jurisdiction to the extent such capital gains are included in the  
31 taxpayer's Washington capital gains. The amount of credit under this  
32 subsection may not exceed the total amount of tax due under this  
33 chapter, and there is no carryback or carryforward of any unused  
34 credits.

35        (b) As used in this section, "taxing jurisdiction" means a state  
36 of the United States other than the state of Washington, the District  
37 of Columbia, the Commonwealth of Puerto Rico, any territory or  
38 possession of the United States, or any foreign country or political  
39 subdivision of a foreign country.

1        NEW SECTION.    **Sec. 8.**    (1)(a) Except as otherwise provided in  
2 this section or RCW 82.32.080, taxpayers owing tax under this chapter  
3 must file, on forms prescribed by the department, a return with the  
4 department on or before the date the taxpayer's federal income tax  
5 return for the taxable year is required to be filed.

6        (b)(i) Except as provided in (b)(ii) of this subsection (1),  
7 returns and all supporting documents must be filed electronically  
8 using the department's online tax filing service or other method of  
9 electronic reporting as the department may authorize.

10        (ii) The department may waive the electronic filing requirement  
11 in this subsection for good cause as provided in RCW 82.32.080.

12        (2) In addition to the Washington return required to be filed  
13 under subsection (1) of this section, taxpayers owing tax under this  
14 chapter must file with the department on or before the date the  
15 federal return is required to be filed a copy of the federal income  
16 tax return along with all schedules and supporting documentation.

17        (3) Each taxpayer required to file a return under this section  
18 must, without assessment, notice, or demand, pay any tax due thereon  
19 to the department on or before the date fixed for the filing of the  
20 return, regardless of any filing extension. The tax must be paid by  
21 electronic funds transfer as defined in RCW 82.32.085 or by other  
22 forms of electronic payment as may be authorized by the department.  
23 The department may waive the electronic payment requirement for good  
24 cause as provided in RCW 82.32.080. If any tax due under this chapter  
25 is not paid by the due date, interest and penalties as provided in  
26 chapter 82.32 RCW apply to the deficiency.

27        (4) The department may by rule require that certain individuals  
28 and other persons file, at times and on forms prescribed by the  
29 department, informational returns for any period.

30        (5) If a taxpayer has obtained an extension of time for filing  
31 the federal income tax return for the taxable year, the taxpayer is  
32 entitled to the same extension of time for filing the return required  
33 under this section if the taxpayer provides the department, before  
34 the due date provided in subsection (1) of this section, the  
35 extension confirmation number or other evidence satisfactory to the  
36 department confirming the federal extension. An extension under this  
37 subsection for the filing of a return under this chapter is not an  
38 extension of time to pay the tax due under this chapter.

39        (6)(a) If any return due under subsection (1) of this section,  
40 along with a copy of the federal income tax return, is not filed with

1 the department by the due date or any extension granted by the  
2 department, the department must assess a penalty in the amount of  
3 five percent of the tax due for the taxable year covered by the  
4 return for each month or portion of a month that the return remains  
5 unfiled. The total penalty assessed under this subsection may not  
6 exceed 25 percent of the tax due for the taxable year covered by the  
7 delinquent return. The penalty under this subsection is in addition  
8 to any penalties assessed for the late payment of any tax due on the  
9 return.

10 (b) The department must waive or cancel the penalty imposed under  
11 this subsection if:

12 (i) The department is persuaded that the taxpayer's failure to  
13 file the return by the due date was due to circumstances beyond the  
14 taxpayer's control; or

15 (ii) The taxpayer has not been delinquent in filing any return  
16 due under this section during the preceding five calendar years.

17 NEW SECTION. **Sec. 9.** (1) If the federal income tax liabilities  
18 of both spouses are determined on a joint federal return for the  
19 taxable year, they must file a joint return under this chapter.

20 (2) Except as otherwise provided in this subsection, if the  
21 federal income tax liability of either spouse is determined on a  
22 separate federal return for the taxable year, they must file separate  
23 returns under this chapter. State registered domestic partners may  
24 file a joint return under this chapter even if they filed separate  
25 federal returns for the taxable year.

26 (3) In any case in which a joint return is filed under this  
27 section, the liability of each spouse or state registered domestic  
28 partner is joint and several, unless:

29 (a) The spouse is relieved of liability for federal tax purposes  
30 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue  
31 code; or

32 (b) The department determines that the domestic partner qualifies  
33 for relief as provided by rule of the department. Such rule, to the  
34 extent possible without being inconsistent with this chapter, must  
35 follow Title 26 U.S.C. Sec. 6015.

36 NEW SECTION. **Sec. 10.** To the extent not inconsistent with the  
37 provisions of this chapter, the following statutes apply to the  
38 administration of taxes imposed under this chapter: RCW 82.32.050,



1 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,  
2 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,  
3 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,  
4 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,  
5 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,  
6 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,  
7 82.32.655, 82.32.805, 82.32.808, and section 13 of this act.

8 NEW SECTION. **Sec. 11.** (1) Any taxpayer who knowingly attempts  
9 to evade payment of the tax imposed under this chapter is guilty of a  
10 class C felony as provided in chapter 9A.20 RCW.

11 (2) Any taxpayer who knowingly fails to pay tax, make returns,  
12 keep records, or supply information, as required under this title, is  
13 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

14 NEW SECTION. **Sec. 12.** The legislature intends that any  
15 provision of this chapter found to be ambiguous by any court of  
16 competent jurisdiction or administrative agency be construed in favor  
17 of application of the tax, notwithstanding any contrary common law  
18 rule of statutory construction.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.04  
20 RCW to read as follows:

21 (1) To avoid taxing the same sale or exchange under both the  
22 business and occupation tax and capital gains tax, a credit is  
23 allowed against taxes due under this chapter on a sale or exchange  
24 that is also subject to the tax imposed under section 2 of this act.  
25 The credit is equal to the amount of tax imposed under this chapter  
26 on such sale or exchange.

27 (2) The credit may be used against any tax due under this  
28 chapter.

29 (3) The credit under this section is earned in regards to a sale  
30 or exchange, and may be claimed against taxes due under this chapter,  
31 for the tax reporting period in which the sale or exchange occurred.  
32 The credit claimed for a tax reporting period may not exceed the tax  
33 otherwise due under this chapter for that tax reporting period.  
34 Unused credit may not be carried forward or backward to another tax  
35 reporting period. No refunds may be granted for unused credit under  
36 this section.

1 (4) The department must apply the credit first to taxes deposited  
2 into the general fund. If any remaining credit reduces the amount of  
3 taxes deposited into the workforce education investment account  
4 established in RCW 43.79.195, the department must notify the state  
5 treasurer of such amounts monthly, and the state treasurer must  
6 transfer those amounts from the general fund to the workforce  
7 education investment account.

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.32  
9 RCW to read as follows:

10 (1) The department may enter into reciprocal tax collection  
11 agreements with the taxing officials of any other state imposing a  
12 specified tax. Agreements authorized under this section must require  
13 each state to offset delinquent specified taxes owed by a taxpayer to  
14 one party to the agreement, including any associated penalties,  
15 interest, or other additions, against refunds of overpaid specified  
16 taxes owed to the taxpayer by the other party to the agreement. Such  
17 agreements may also include provisions governing the sharing of  
18 information relevant to the administration of specified taxes.  
19 However, the department may not share return or tax information with  
20 other states except as allowed under RCW 82.32.330. Likewise, the  
21 department may not share federal tax information with other states  
22 without the express written consent of the internal revenue service.

23 (2) The definitions in this subsection apply throughout this  
24 section unless the context clearly requires otherwise.

25 (a) "Specified taxes" means generally applicable state and local  
26 sales taxes and use taxes, broad-based state gross receipts taxes,  
27 state income taxes, and stand-alone state taxes on capital gains or  
28 interest and dividends. "Specified taxes" includes, but is not  
29 limited to, the taxes imposed in or under the authority of  
30 chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new  
31 chapter created in section 17 of this act), and similar taxes imposed  
32 by another state. For purposes of this subsection (2)(a), "gross  
33 receipts tax," "income tax," "sales tax," and "use tax" have the same  
34 meanings as provided in RCW 82.56.010.

35 (b) "State" has the same meaning as provided in RCW 82.56.010.

36 **Sec. 15.** RCW 82.32.655 and 2010 1st sp.s. c 23 s 201 are each  
37 amended to read as follows:

1 (1) It is the legislature's intent to require all taxpayers to  
2 pay their fair share of taxes. To accomplish this purpose, it is the  
3 legislature's intent to stop transactions or arrangements that are  
4 designed to unfairly avoid taxes.

5 (2) The department must disregard, for tax purposes, the tax  
6 avoidance transactions or arrangements that are described in  
7 subsection (3) of this section. The department must deny the tax  
8 benefit that would otherwise result from the tax avoidance  
9 transaction or arrangement. In determining whether the department  
10 must disregard a transaction or arrangement described under  
11 subsection (3) of this section, the department may consider:

12 (a) Whether an arrangement or transaction changes in a meaningful  
13 way, apart from its tax effects, the economic positions of the  
14 participants in the arrangement when considered as a whole;

15 (b) Whether substantial nontax reasons exist for entering into an  
16 arrangement or transaction;

17 (c) Whether an arrangement or transaction is a reasonable means  
18 of accomplishing a substantial nontax purpose;

19 (d) An entities' relative contributions to the work that  
20 generates income;

21 (e) The location where work is performed; and

22 (f) Other relevant factors.

23 (3) This section applies only to the following transactions or  
24 arrangements:

25 (a) Arrangements that are, in form, a joint venture or similar  
26 arrangement between a construction contractor and the owner or  
27 developer of a construction project but that are, in substance,  
28 substantially guaranteed payments for the purchase of construction  
29 services characterized by a failure of the parties' agreement to  
30 provide for the contractor to share substantial profits and bear  
31 significant risk of loss in the venture;

32 (b) Arrangements through which a taxpayer attempts to avoid tax  
33 under chapter 82.04 RCW by disguising income received, or otherwise  
34 avoiding tax on income, from a person that is not affiliated with the  
35 taxpayer from business activities that would be taxable in Washington  
36 by moving that income to another entity that would not be taxable in  
37 Washington; (~~and~~)

38 (c) Arrangements through which a taxpayer attempts to avoid tax  
39 under chapter 82.08 or 82.12 RCW by engaging in a transaction to  
40 disguise its purchase or use of tangible personal property by vesting

1 legal title or other ownership interest in another entity over which  
2 the taxpayer exercises control in such a manner as to effectively  
3 retain control of the tangible personal property; and

4 (d) Arrangements through which a taxpayer attempts to avoid tax  
5 imposed in section 2 of this act through misuse of the deduction in  
6 section 6 of this act.

7 (4) In determining whether a transaction or arrangement comes  
8 within the scope of subsection (3) of this section, the department is  
9 not required to prove a taxpayer's subjective intent in engaging in  
10 the transaction or arrangement.

11 (5) The department must adopt rules to assist in determining  
12 whether a transaction or arrangement is within the scope of  
13 subsection (3) of this section. The adoption of a rule as required  
14 under this subsection is not a condition precedent for the  
15 department's exercise of the authority provided in this section. Any  
16 rules adopted under this section must include examples of  
17 transactions that the department will disregard for tax purposes.

18 (6) This section does not affect the department's authority to  
19 apply any other remedies available under statutory or common law.

20 (7) For purposes of this section, "affiliated" means under common  
21 control. "Control" means the possession, directly or indirectly, of  
22 more than fifty percent of the power to direct or cause the direction  
23 of the management and policies of a person, whether through the  
24 ownership of voting shares, by contract, or otherwise.

25 NEW SECTION. Sec. 16. The provisions of RCW 82.32.805 and  
26 82.32.808 do not apply to this act.

27 NEW SECTION. Sec. 17. Sections 1 through 12 of this act  
28 constitute a new chapter in Title 82 RCW.

29 NEW SECTION. Sec. 18. If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 NEW SECTION. Sec. 19. (1) If a court of competent jurisdiction,  
34 in a final judgment not subject to appeal, adjudges section 2 of this  
35 act unconstitutional, or otherwise invalid, in its entirety, section  
36 13 of this act is null and void in its entirety. Any credits

1 previously claimed under section 13 of this act must be repaid within  
2 30 days of the department of revenue's notice to the taxpayer of the  
3 amount due.

4 (2) If the taxpayer fails to repay the credit by the due date,  
5 interest and penalties as provided in chapter 82.32 RCW apply to the  
6 deficiency.

7 NEW SECTION. **Sec. 20.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of  
9 the state government and its existing public institutions, and takes  
10 effect immediately.

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