

FINAL BILL REPORT

EHB 2005

C 209 L 17
Synopsis as Enacted

Brief Description: Improving the business climate in this state by simplifying the administration of municipal general business licenses.

Sponsors: Representatives Lytton, Nealey, Kagi and Ormsby.

House Committee on Finance
Senate Committee on Commerce, Labor & Sports
Senate Committee on Ways & Means

Background:

City Business and Occupation Taxes.

Local Business and Occupation (B&O) taxes are levied at a percentage rate on the gross receipts of a business, less some deductions. Businesses are put in different classes such as manufacturing, wholesaling, retailing, and services. Within each class the rate must be the same, but it may differ among classes. Forty-three of Washington's 281 cities levy this tax.

In 2003 legislation directed the Association of Washington Cities (AWC) to convene a committee to develop a model ordinance that would be adopted by all cities imposing a B&O tax no later than December 31, 2004. The model ordinance was required to contain certain mandatory provisions: a system of credits that prevent multiple taxation of the same income; a gross receipts threshold for small businesses; tax reporting frequency requirements; and provisions for penalties and interest, refunds, and deductions comparable with state law. Beginning January 1, 2008, cities that levied a B&O tax were required to allow for allocation and apportionment of taxes between cities.

City Business Licensing.

Approximately 212 of Washington's 281 cities require a business license for any business conducting business activities within the city. Fees associated with business licenses vary from flat rate charges to fees based on factors, including employee count, square footage occupied, or business type. For cities imposing a B&O tax, business licensing fees and filing requirements are separate, and in addition to B&O taxes.

Administration of Local Business and Occupation Tax and Local Business Licensing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Business Licensing Service (BLS) within the Department of Revenue (DOR) is the clearinghouse for business licensing, partners with 10 state agencies, and facilitates the issuance of local business licenses on behalf of approximately 70 cities. Agency programs and municipalities retain full regulatory control over their registration and compliance requirements.

In 2014 the cities of Seattle, Tacoma, Bellevue, and Everett signed an interlocal agreement to establish a "one-stop" system for tax payment and business license application filing to make it easier and more efficient for businesses to apply for local business licenses, and file local taxes, while the cities retain local control over local licensing, tax collection functions, and policies. The objective is to administer tax collection and business licensing functions collectively, and allow businesses operating in multiple cities to use a one-stop system for tax payment or local business license application filing. The project became operational in 2016 and is known as FileLocal.

Local Tax and Licensing Simplification Task Force.

In 2015 legislation was enacted directing the Department to lead a Local Tax and Licensing Simplification Task Force (Simplification Task Force) during the 2016 interim to evaluate and develop options to: (a) improve the local business licensing process; (b) examine the difference in nexus between the state and cities; (c) examine allocation and apportionment methods; (d) centralize B&O tax collection; and (e) share data between the Department and FileLocal.

In 2017 the Simplification Task Force prepared and presented a report for the Legislature that examined the differences in apportionment and nexus between state and local B&O taxes, and how these differences affect taxpayers and cities; evaluated additional and alternative options to improve the administration of local business taxes and licensing; and provided recommendations for options evaluated by the Simplification Task Force. The Simplification Task Force provided recommendations on four of the five topics and did not provide a recommendation about how to centralize B&O tax collection.

Summary:

City Business Licensing.

All cities that require a general business license (license), unless otherwise exempted (partnering cities) are required to partner with the Department to issue and renew licenses through the BLS. The Department must partner with all partnering cities by December 31, 2022, if specific funding is appropriated for that purpose. If specific funding is not appropriated, the Department must partner with at least six cities per year between January 1, 2018 and December 31, 2021. Between January 1, 2022 and December 31, 2027, the Department must partner with the remaining partnering cities.

The Department may delay assuming the duties of issuing and renewing general business licenses if insufficient funds are appropriated for this purpose, the Department cannot ensure the BLS is adequately prepared to handle all general business licenses due to unforeseen circumstances, or the Department determines that a delay is necessary to ensure that the transition to the mandatory Department issuance and renewal of general business license is as seamless as possible. Additionally, if a city submits written notice that it needs to delay

implementation due to fiscal or technical challenges, the Department may delay implementation for that city for up to three years.

Cities are exempt from partnering with the Department to issue and renew licenses through the BLS if the city participates in the FileLocal program as of July 1, 2020.

By January 1, 2018, and January 1 of each even-numbered year thereafter, the Department must establish a biennial plan for partnering with cities and submit it to the Governor, the Legislature, affected cities, the AWC, the AWB, the NFIB, and the WRA (stakeholders). The Department may alter the plan with a minimum notice of 30 days to affected cities.

By January 1, 2019, and each January 1 thereafter through January 1, 2028, the Department must submit a progress report to the Legislature to provide information about the progress of the efforts to partner with all cities that impose a license requirement.

Partnering cities may adopt a broad fee structure, but it must be within the Department's technological ability to administer. If the Department is unable to administer a city's fee structure, the city must work with the Department to adopt a fee structure that is administrable by the Department. If a city does not work with the Department, the city may not enforce its general business licensing requirements until the effective date of a fee structure that is administrable by the Department. Cities may not require businesses to renew a license more than once per year. The BLS is not required to accommodate fees imposed by a city on a business for failing to obtain or renew a license. The Department may refuse to administer any license ordinance that is inconsistent with the rest of the provisions.

The Department's authority to administer a partnering city's licensing laws is limited to: issuing or renewing licenses; and refusing to issue a license due to an incomplete application, nonpayment of fees, or nonpayments of penalties for late renewal. Partnering cities have the authority to set licensing fees, provide exemptions and thresholds, approve or deny licenses, and take appropriate administrative action against licensees. Cities may only require a business to obtain or renew a license if they engage in business within the respective city. Partnering cities must provide the Department with at least 75 days notice if the city changes who must obtain a license, who is exempt from obtaining a license, or the amount or method of determining any fee to issue or renew a license.

Cities, working through the AWC, must form a committee to develop and adopt a general business licensing model ordinance by July 1, 2018. The ordinance must include a definition of "engaging in business within the city" and a uniform minimum licensing threshold under which a person is exempt from obtaining a license. Cities must adopt the provisions of the model ordinance by January 1, 2019, or they may not enforce their licensing requirements until they adopt the ordinance. Cities must coordinate with the AWC to submit a report to the Governor, the Legislature, and stakeholders to provide information about the model ordinance and identify cities that have and have not adopted the provisions. The report must incorporate comments from statewide business organizations concerning the model ordinance process and substance. Business organizations must be allowed 30 days to submit comments for inclusion in the report.

Local Business and Occupational Tax Apportionment.

Cities, towns, and identified business organizations must partner and recommend changes to simplify the two-factor municipal B&O tax apportionment formula. The Local Business and Occupation Tax Apportionment Task Force (Apportionment Task Force) is created and must consist of the following seven representatives: three voting representatives selected by the AWC that are tax managers representing municipalities that impose a B&O tax, including at least one jurisdiction that has performed an audit where apportionment errors were discovered; three voting representatives selected by the AWB, including at least one tax practitioner or legal counsel with experience representing business clients during municipal audits that involved apportionment errors or disputes; and one nonvoting representative from the Department who will serve as the Apportionment Task Force chair. The Department must staff the Apportionment Task Force. The Apportionment Task Force may seek input or collaborate with other parties if necessary. The Apportionment Task Force must present its recommendations to the Legislature by October 31, 2018.

Votes on Final Passage:

House	96	2	
Senate	49	0	(Senate amended)
House	97	0	(House concurred)

Effective: July 23, 2017