

SENATE BILL REPORT

EHB 2005

As Reported by Senate Committee On:
Commerce, Labor & Sports, March 23, 2017
Ways & Means, March 30, 2017

Title: An act relating to improving the business climate in this state by simplifying the administration of municipal general business licenses.

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.

Brief History: Passed House: 3/02/17, 96-2.

Committee Activity: Commerce, Labor & Sports: 3/15/17, 3/23/17 [DPA].
Ways & Means: 3/30/17 [DPA].

Brief Summary of Amended Bill

- Requires most cities to partner with the Department of Revenue (DOR) to administer general business licenses through the DOR's Business Licensing Service.
- Requires cities to develop a general business licensing model ordinance.
- Establishes the Local Business and Occupation Tax Apportionment Task Force to recommend changes to simplify the two-factor apportionment formula.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: Do pass as amended.

Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway, Hasegawa, King, Rossi, Saldaña and Wilson.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: Do pass as amended.

Signed by Senators Braun, Chair; Brown, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Padden, Pedersen, Rivers, Schoesler, Warnick and Zeiger.

Staff: Dean Carlson (786-7305)

Background: City Business and Occupation (B&O) Taxes. Similar to the state B&O tax, 43 of Washington's cities levy a local B&O tax on the gross receipts of a business. Types of local B&O tax classes include manufacturing, wholesaling, retailing, and services.

In 2003, the Legislature passed a bill that required 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 legislation required that the model ordinance have 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 had to allow for allocation and apportionment of taxes between cities. A two-factor formula for allocation and apportionment is used.

City Business Licensing. Approximately 226 cities issue a city business license. Fees associated with the business license vary from flat rate charges to fees based on some combination of employee count, square footage occupied, or business type. For cities imposing a local B&O tax, business licensing fees and filing requirements are separate and in addition to local B&O taxes.

Administration of Local B&O Tax and Local Business Licensing. Unlike local sales and use taxes, local B&O taxes are administered exclusively at the local level. In 1977, the Legislature created the Master License Service to streamline business licensing and renewal. The program transferred to DOR on July 1, 2011. The Master License Service was renamed to the Business Licensing Service to better reflect the program's purpose: the Business Licensing Service is the clearinghouse for various business licenses and endorsements from 10 state agencies and 66 cities.

FileLocal is an online local business license and tax filing portal. It is currently operated through interlocal agreement among the cities of Bellevue, Everett, Seattle, and Tacoma.

Local Tax & Licensing Simplification Task Force (taskforce). In 2016, the Legislature established a nine member taskforce to develop options for centralizing and simplifying local B&O tax and business licensing. The taskforce was required to evaluate:

- options to coordinate administration of local B&O taxes;
- options for centralized administration of local B&O taxes for those cities and towns that desire to participate in a state-provided alternative;
- options for all cities and towns to partner with the state Business Licensing Service; and

- implementing data sharing and establishing a seamless state and local user interface for those cities and towns participating in FileLocal.

The taskforce was also required to prepare a report that includes additional options to improve the administration of local B&O tax and licensing that are not included in the act.

Summary of Amended Bill: Business Licensing. A city that requires a general business license must partner with DOR to issue and renew the license through DOR's Business Licensing Service. A city may continue to issue and renew its general business license until it partners with DOR. After July 1, 2017, a city that imposes a new general business license must inform DOR in writing. DOR's partnerships with cities are phased in over a ten-year period, however, if specific funding is provided in the budget, all cities requiring a general business license must partner with DOR by December 31, 2022.

DOR may delay assuming the duties of issuing and renewing general business licenses if:

- insufficient funds are appropriated;
- the system is not adequately prepared to handle all the general business licenses due to unforeseen circumstances;
- a delay is necessary to ensure the transition is as seamless as possible; or
- DOR receives notice from a city that the city needs to delay implementation due to fiscal or technical challenges. The notice must be in writing and be provided within 60 days of the city appearing on DOR's partnership plan, and must include an explanation of the fiscal or technical challenges.

A city may decline to partner with DOR if the city participates in the online local business license and tax filing portal known as FileLocal before July 1, 2020.

Cities have the authority to set a fee structure, but the structure must be within DOR's technical ability to administer. A general business license may not be renewed more frequently than once per year. A city may not require a person to obtain or renew a general business license unless the person engages in business within the respective city.

DOR is required to submit a partnering plan to the Governor and the Legislature biennially. The plan must include the cities that DOR will partner with and target dates. DOR may alter the plan with 30 days' notice to the affected cities. DOR is also required to submit an annual progress report to the Legislature.

Model Ordinance. The cities, working through the Association of Washington Cities, must form a model ordinance development committee. The committee must adopt a model ordinance on general business license requirements by July 1, 2018. The definitions in the model ordinance may not be amended more than once every four years.

A city that imposes a general business license must adopt the mandatory provisions of the model ordinance. The mandatory provisions include the following:

- the definition of engaging in business within the city; and
- a uniform minimum licensing threshold under which a person would not have to obtain a city's general business license.

A city may create a higher threshold but cannot deviate lower than the minimum threshold established by the model ordinance. A city may require a registration for persons not meeting the minimum threshold. Any registration required must be done through DOR's Business Licensing Service. A city that has not adopted the mandatory provisions of the model ordinance by January 1, 2019, may not enforce its general business license requirements.

Local Business and Occupation Tax Apportionment. Cities, towns, and identified business organizations must partner in recommending changes to simplify the two-factor apportionment formula. The Local Business and Occupation Tax Apportionment Task Force (Task Force) is created. The Task Force is comprised of six voting members comprised of representatives of the cities and the business community. The Task Force must meet at least monthly until it reports its recommendations to the Legislature by October 31, 2018.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Requires DOR to partner with all cities requiring a business license by December 31, 2022, if specific funding is appropriated for that purpose.

EFFECT OF COMMERCE, LABOR & SPORTS COMMITTEE AMENDMENT(S):

The deadline for cities to participate in FileLocal as an alternative to DOR's Business Licensing Service is modified from July 1, 2018 to July 1, 2020. A provision requiring DOR to delay implementation for up to three years if it receives notice from a city that the city needs to delay implementation due to fiscal or technical challenges is added. The notice must be in writing within 60 days of the city appearing on DOR's partnership plan.

A provision authorizing cities with a population of fewer than 500 to decline to partner with DOR if doing so would cause undue hardship is removed. The chair of the Local Business and Occupation Tax Apportionment Task Force, which is established in the bill, is changed from the Municipal Research and Services Center to DOR.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed House Bill (Commerce, Labor & Sports): *The committee recommended a different version of the bill than what was heard.*

PRO: This bill simplifies the business licensing process that can create problems for business owners throughout the state. Cities are balkanized in their licensing systems and that makes it difficult on businesses. The five-year phase-in of the Senate bill is preferred. However, the lack of a hardship definition in the Senate bill makes a systemic solution to the problem of patchwork licensing systems difficult.

CON: The Senate bill has a three-year phase-in window for cities to join FileLocal, this bill has a much shorter window and that is preferred.

OTHER: The Senate bill is preferred because it provides more flexibility for cities and allows DOR to delay implementation if the city lacks the fiscal or technical ability. DOR should not be able to invalidate a city's business license. The population threshold to claim hardship in this bill makes it extremely difficult on cities. This bill makes the Municipal Research and Services Center the chair of the apportionment committee, but they lack the expertise and resources to do so. Some cities need more time to implement their own local solutions.

Persons Testifying (Commerce, Labor & Sports): PRO: Mark Johnson, Washington Retail Association; Patrick Connor, NFIB/Washington; Eric Lohnes, Association of Washington Business.

CON: Robert Hamud, Client Services Manager.

OTHER: Victoria Lincoln, Assoc. of WA Cities; Jan Hawn, City of Renton; Cody Arledge, City of Seattle.

Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports): No one.

Staff Summary of Public Testimony (Ways & Means): No public hearing was held.

Persons Testifying (Ways & Means): N/A.

Persons Signed In To Testify But Not Testifying (Ways & Means): N/A.