

SENATE BILL REPORT

ESSB 5777

As Passed Senate, March 3, 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: Senate Committee on Commerce, Labor & Sports (originally sponsored by Senators Brown, Carlyle, Angel, Chase and Saldaña).

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/15/17 [DPS].

Floor Activity:

Passed Senate: 3/03/17, 44-0.

Brief Summary of Engrossed First Substitute Bill

- Requires cities that issue a general business license to partner with the Department of Revenue (DOR) to issue and renew licenses through DOR's Business Licensing Service.
- Requires cities to adopt a model ordinance for general business licensing requirements that contains certain mandatory provisions to be adopted by all cities.
- Establishes the Local Business and Occupation Tax Apportionment Task Force to recommend simplifications the two-factor apportionment formula for business and occupation taxes.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: That Substitute Senate Bill No. 5777 be substituted therefor, and the substitute bill do pass.

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

Staff: Jarrett Sacks (786-7448)

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.

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 bill.

Summary of Engrossed First Substitute 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 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;
- the city's legislative body determines partnering with DOR would cause undue hardship.

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;
- determines that partnering with DOR will cause undue hardship; or
- determines that, after partnering with DOR for at least one year, that continuing to partner with DOR would cause undue hardship.

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 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 Governor and 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 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.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill is an outgrowth of a task force that met over the summer. The bill represents many of the recommendations of that task force. The bill gives cities enough flexibility to choose what system works best for them. It would simplify bookkeeping for a lot of small businesses. Having one go-to place for business licensing would help businesses a lot. There are some concerns over how broad the exceptions are, but the bill is a step in the right direction.

Persons Testifying: PRO: Senator Sharon Brown, Prime Sponsor; Jeff Garfield, Bedrooms and More; Mark Johnson, Washington Retail Association; Patrick Connor, NFIB/Washington; Patty Lent, Mayor - Bremerton; Peter King, AWC; Eric Lohnes, Association of Washington Business; Krystal Garfield, Bedrooms and More.

Persons Signed In To Testify But Not Testifying: No one.