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**SUBSTITUTE SENATE BILL 5777**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Commerce, Labor & Sports (originally sponsored by Senators Brown, Carlyle, Angel, Chase, and Saldaña)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to improving the business climate in this state  
2 by simplifying the administration of municipal general business  
3 licenses; adding a new chapter to Title 35 RCW; and creating a new  
4 section.

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

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

9 (1) "Business licensing service," "business licensing system,"  
10 and "business license" have the same meaning as in RCW 19.02.020.

11 (2) "City" means a city, town, or code city.

12 (3) "Department" means the department of revenue.

13 (4) "General business license" means a license, not including a  
14 regulatory license or a temporary license, that a city requires all  
15 or most businesses to obtain to conduct business within that city.

16 (5) "Partner" means the relationship between a city and the  
17 department under which general business licenses are issued and  
18 renewed through the business licensing service in accordance with  
19 chapter 19.02 RCW.

20 (6) "Regulatory business license" means a license, other than a  
21 general business license, required for certain types of businesses

1 that a city has determined warrants additional regulation, such as  
2 taxicab or other for-hire vehicle operators, adult entertainment  
3 businesses, amusement device operators, massage parlors, debt  
4 collectors, door-to-door sales persons, trade-show operators, and  
5 home-based businesses.

6 NEW SECTION. **Sec. 2.** (1) Except as otherwise provided in  
7 subsection (7) of this section, a city that requires a general  
8 business license of any person that engages in business activities  
9 within that city must partner with the department to have such  
10 license issued, and renewed if the city requires renewal, through the  
11 business licensing service in accordance with chapter 19.02 RCW.

12 (a) Except as otherwise provided in subsection (3) of this  
13 section, the department must phase in the issuance and renewal of  
14 general business licenses of cities that required a general business  
15 license as of July 1, 2017, and by December 31, 2022, if specific  
16 funding for the purposes of this section is appropriated by June 30,  
17 2017, in the omnibus appropriations act.

18 (b) A city that imposes a general business license requirement  
19 and does not partner with the department as of January 1, 2018, may  
20 continue to issue and renew its general business licenses until the  
21 city partners with the department as provided in subsection (4) of  
22 this section.

23 (2)(a) A city that did not require a general business license as  
24 of July 1, 2017, but imposes a new general business license  
25 requirement after that date must advise the department in writing of  
26 its intent to do so at least ninety days before the requirement takes  
27 effect.

28 (b) If a city subject to (a) of this subsection (2) imposes a new  
29 general business license requirement after July 1, 2017, the  
30 department, in its sole discretion, may adjust resources to partner  
31 with the imposing city as of the date that the new general business  
32 licensing requirement takes effect, except as otherwise provided in  
33 subsection (7) of this section. If the department cannot reallocate  
34 resources, the city may issue and renew its general business license  
35 until the department is able to partner with the city.

36 (3) The department may delay assuming the duties of issuing and  
37 renewing general business licenses beyond the dates provided in  
38 subsection (1)(a) of this section if:

1 (a) Insufficient funds are appropriated for this specific  
2 purpose;

3 (b) The department cannot ensure the business licensing system is  
4 adequately prepared to handle all general business licenses due to  
5 unforeseen circumstances; or

6 (c) The department determines that a delay is necessary to ensure  
7 that the transition to mandatory department issuance and renewal of  
8 general business licenses is as seamless as possible.

9 (4)(a) In consultation with affected cities and in accordance  
10 with the priorities established in subsection (5) of this section,  
11 the department must establish a biennial plan for partnering with  
12 cities to assume the issuance and renewal of general business  
13 licenses as required by this section. The plan must identify the  
14 cities that the department will partner with and the dates targeted  
15 for the department to assume the duties of issuing and renewing  
16 general business licenses.

17 (b) By January 1, 2018, and January 1st of each even-numbered  
18 year thereafter, the department must submit the partnering plan  
19 required in (a) of this subsection (4) to the governor; legislative  
20 fiscal committees; house local government committee; senate  
21 agriculture, water, trade and economic development committee; senate  
22 local government committee; affected cities; association of  
23 Washington cities; association of Washington business; national  
24 federation of independent business; and Washington retail  
25 association.

26 (c) The department may, in its sole discretion, alter the plan  
27 required in (a) of this subsection (4) with a minimum notice of  
28 thirty days to affected cities.

29 (5) When determining the plan to partner with cities for the  
30 issuance and renewal of general business licenses as required in  
31 subsection (4) of this section, cities that notified the department  
32 of their wish to partner with the department before January 1, 2017,  
33 must be allowed to partner before other cities.

34 (6) A city that partners with the department for the issuance and  
35 renewal of general business licenses through the business licensing  
36 service in accordance with chapter 19.02 RCW may not issue and renew  
37 those licenses.

38 (7) A city may decline to partner with the department for the  
39 issuance and renewal of a general business license as provided in  
40 subsection (1) of this section if:

1 (a) The city participates in the online local business license  
2 and tax filing portal known as "FileLocal." For the purposes of this  
3 subsection (7)(a), a city is considered to be a FileLocal participant  
4 as of the date that a business may access FileLocal for purposes of  
5 applying for or renewing that city's general business license and  
6 reporting and paying that city's local business and occupation taxes;

7 (b) The city determines that partnering with the department would  
8 cause an undue hardship. A city that declines to partner with the  
9 department for the issuance and renewal of its general business  
10 license as provided in this subsection must provide written notice to  
11 the department within sixty days of the date that a city appears on  
12 the department's biennial partnering plan as provided in subsection  
13 (4) of this section. Such written notice must include an explanation  
14 of the nature of the hardship. Hardship may include, but is not  
15 limited to, lack of fiscal or technical ability to participate in the  
16 partnering process, lack of support from the city legislative  
17 authority to become a partner, preference for a local system based on  
18 local circumstances or conditions, or other hardships identified by  
19 the city; or

20 (c) The city determines that continuing to partner with the  
21 department is not practicable. A city that partners with the  
22 department for the issuance and renewal of a general business license  
23 as provided in subsection (1) of this section may terminate  
24 partnering with the department. The city must provide written notice  
25 to the department of its reasons for terminating the partnership at  
26 least sixty days before termination.

27 (8) By January 1, 2019, and each January 1st thereafter through  
28 January 1, 2028, the department must submit a progress report to the  
29 governor; legislative fiscal committees; house local government  
30 committee; senate agriculture, water, trade and economic development  
31 committee; senate local government committee; association of  
32 Washington cities; association of Washington business; national  
33 federation of independent business; and Washington retail  
34 association. The report required by this subsection must provide  
35 information about the progress of the department's efforts to partner  
36 with all cities that impose a general business license requirement  
37 and include:

38 (a) A list of cities that have partnered with the department as  
39 required in subsection (1) of this section;

40 (b) A list of cities that have not partnered with the department;

1 (c) A list of cities that are scheduled to partner with the  
2 department during the upcoming calendar year;

3 (d) A list of cities that have declined to partner with the  
4 department as provided in subsection (7) of this section;

5 (e) An explanation of lessons learned and any process  
6 efficiencies incorporated by the department;

7 (f) Any recommendations to further simplify the issuance and  
8 renewal of general business licenses by the department; and

9 (g) Any other information the department considers relevant.

10 NEW SECTION. **Sec. 3.** (1) A general business license that must  
11 be issued and renewed through the business licensing service in  
12 accordance with chapter 19.02 RCW is subject to the provisions of  
13 this section.

14 (2)(a) A city has broad authority to impose a fee structure as  
15 provided by RCW 35.22.280, 35.23.440, and 35A.82.020. However, any  
16 fee structure selected by a city must be within the department's  
17 technical ability to administer. The department has the sole  
18 discretion to determine if it can administer a city's fee structure.

19 (b) If the department is unable to administer a city's fee  
20 structure, the city must work with the department to adopt a fee  
21 structure that is administrable by the department. If a city fails to  
22 comply with this subsection (2)(b), it may not enforce its general  
23 business licensing requirements on any person until the effective  
24 date of a fee structure that is administrable by the department.

25 (3) A general business license may not be renewed more frequently  
26 than once per year except that the department may require a more  
27 frequent renewal date as may be necessary to synchronize the renewal  
28 date for the general business license with the business's business  
29 license expiration date.

30 (4) The business licensing system need not accommodate any  
31 monetary penalty imposed by a city for failing to obtain or renew a  
32 general business license. The penalty imposed in RCW 19.02.085  
33 applies to general business licenses that are not renewed by their  
34 expiration date.

35 (5) The department may refuse to administer any provision of a  
36 city business license ordinance that is inconsistent with this  
37 chapter.

1        NEW SECTION.     **Sec. 4.**     The department is not authorized to  
2 enforce a city's licensing laws except to the extent of issuing or  
3 renewing a license in accordance with this chapter and chapter 19.02  
4 RCW or refusing to issue a license due to an incomplete application,  
5 nonpayment of the appropriate fees as indicated by the license  
6 application or renewal application, or the nonpayment of any  
7 applicable penalty for late renewal.

8        NEW SECTION.     **Sec. 5.**     Cities whose general business licenses are  
9 issued through the business licensing system retain the authority to  
10 set license fees, provide exemptions and thresholds for these  
11 licenses, approve or deny license applicants, and take appropriate  
12 administrative actions against licensees.

13       NEW SECTION.     **Sec. 6.**     Cities may not require a person to obtain  
14 or renew a general business license unless the person engages in  
15 business within its respective city. For the purposes of this  
16 section, a person may not be considered to be engaging in business  
17 within a city unless the person is subject to the taxing jurisdiction  
18 of a city under the standards established for interstate commerce  
19 under the commerce clause of the United States Constitution.

20       NEW SECTION.     **Sec. 7.**     A general business license change enacted  
21 by a city whose general business license is issued through the  
22 business licensing system takes effect no sooner than seventy-five  
23 days after the department receives notice of the change if the change  
24 affects in any way who must obtain a license, who is exempt from  
25 obtaining a license, or the amount or method of determining any fee  
26 for the issuance or renewal of a license.

27       NEW SECTION.     **Sec. 8.**     (1)(a) The cities, working through the  
28 association of Washington cities, must form a model ordinance  
29 development committee made up of a representative sampling of cities  
30 that impose a general business license requirement. This committee  
31 must work through the association of Washington cities to adopt a  
32 model ordinance on general business license requirements by July 1,  
33 2018. The model ordinance and subsequent amendments developed by the  
34 committee must be adopted using a process that includes opportunity  
35 for substantial input from business stakeholders and other members of  
36 the public. Input must be solicited from statewide business

1 associations and from local chambers of commerce and downtown  
2 business associations in cities that require a person that conducts  
3 business in the city to obtain a general business license.

4 (b) The department, association of Washington cities, and  
5 municipal research and services center must post copies of, or links  
6 to, the model ordinance on their internet web sites. Additionally, a  
7 city that imposes a general business license requirement must make  
8 copies of its general business license ordinance or ordinances  
9 available for inspection and copying as provided in chapter 42.56  
10 RCW.

11 (c) The definitions in the model ordinance may not be amended  
12 more frequently than once every four years, except that the model  
13 ordinance may be amended at any time to comply with changes in state  
14 law or court decisions. Any amendment to a mandatory provision of the  
15 model ordinance must be adopted with the same effective date by all  
16 cities.

17 (2) A city that imposes a general business license requirement  
18 must adopt the mandatory provisions of the model ordinance by January  
19 1, 2019. The following provisions are mandatory:

20 (a) A definition of "engaging in business within the city" for  
21 purposes of delineating the circumstances under which a general  
22 business license is required;

23 (b) A uniform minimum licensing threshold under which a person  
24 would be relieved of the requirement to obtain a city's general  
25 business license. A city retains the authority to create a higher  
26 threshold for the requirement to obtain a general business license  
27 but must not deviate lower than the level required by the model  
28 ordinance.

29 (3)(a) A city may require a person that is under the uniform  
30 minimum licensing threshold as provided in subsection (2) of this  
31 section to obtain a city registration with no fee due to the city.

32 (b) A city that requires a city registration as provided in (a)  
33 of this subsection must partner with the department to have such  
34 registration issued through the business licensing service in  
35 accordance with chapter 19.02 RCW. This subsection (3)(b) does not  
36 apply to a city that is excluded from the requirement to partner with  
37 the department for the issuance and renewal of general business  
38 licenses as provided in section 2 of this act.

1        NEW SECTION.     **Sec. 9.**     Cities that impose a general business  
2 license must adopt the mandatory provisions of the model ordinance as  
3 provided in section 8 of this act by January 1, 2019. A city that has  
4 not complied with the requirements of this section by January 1,  
5 2019, may not enforce its general business licensing requirements on  
6 any person until the date that the mandatory provisions of the model  
7 ordinance take effect within the city.

8        NEW SECTION.     **Sec. 10.**     Cities must coordinate with the  
9 association of Washington cities to submit a report to the governor;  
10 legislative fiscal committees; house local government committee; and  
11 the senate agriculture, water, trade and economic development  
12 committee by January 1, 2019. The report must:

13        (1) Provide information about the model ordinance adopted by the  
14 cities as required in section 8 of this act;

15        (2) Identify cities that have and have not adopted the mandatory  
16 provisions of the model ordinance; and

17        (3) Incorporate comments from statewide business organizations  
18 concerning the process and substance of the model ordinance.  
19 Statewide business organizations must be allowed thirty days to  
20 submit comments for inclusion in the report.

21        NEW SECTION.     **Sec. 11.**     (1) The legislature directs cities,  
22 towns, and identified business organizations to partner in  
23 recommending changes to simplify the two factor apportionment formula  
24 provided in RCW 35.102.130.

25        (2)(a) The local business and occupation tax apportionment task  
26 force is established. The task force must consist of the following  
27 seven representatives:

28        (i) Three voting representatives selected by the association of  
29 Washington cities that are tax managers representing municipalities  
30 that impose a local business and occupation tax, including at least  
31 one jurisdiction that has performed an audit where apportionment  
32 errors were discovered.

33        (ii) Three voting representatives selected by the association of  
34 Washington business, including at least one tax practitioner or legal  
35 counsel with experience representing business clients during  
36 municipal audits that involved apportionment errors or disputes.

37        (iii) One nonvoting representative from the department of  
38 revenue.



1 (b) The task force may seek input or collaborate with other  
2 parties, as it deems necessary. The department of revenue must serve  
3 as the task force chair and must staff the task force.

4 (c) Beginning in the first month following the effective date of  
5 this section, the task force must meet no less frequently than once  
6 per month until it reports to the legislature as provided under  
7 subsection (3) of this section.

8 (3) By October 31, 2018, the task force established in subsection  
9 (2) of this section must prepare a report to the legislature to  
10 recommend changes to RCW 35.102.130 and related sections, as needed,  
11 to develop a method for assigning gross receipts to a local  
12 jurisdiction using a market-based model. The task force must focus on  
13 methods that rely on information typically available in commercial  
14 transaction receipts and captured by common business recordkeeping  
15 systems.

16 (4) The task force terminates January 1, 2019, unless legislation  
17 is enacted to extend such termination date.

18 NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act  
19 constitute a new chapter in Title 35 RCW.

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