

ESSB 5777 - H COMM AMD
By Committee on Finance

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

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

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

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

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

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

17 (6) "Regulatory business license" means a license, other than a
18 general business license, required for certain types of businesses
19 that a city has determined warrants additional regulation, such as
20 taxicab or other for-hire vehicle operators, adult entertainment
21 businesses, amusement device operators, massage parlors, debt
22 collectors, door-to-door sales persons, trade-show operators, and
23 home-based businesses.

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

1 (a) Except as otherwise provided in subsection (3) of this
2 section, the department must phase in the issuance and renewal of
3 general business licenses of cities that required a general business
4 license as of July 1, 2017, and are not already partnering with the
5 department, as follows:

6 (i) Between January 1, 2018, and December 31, 2021, the
7 department must partner with at least six cities per year.

8 (ii) Between January 1, 2022, and December 31, 2027, the
9 department must partner with the remaining cities.

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

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

20 (b) If a city subject to (a) of this subsection (2) imposes a new
21 general business license requirement after July 1, 2017, the
22 department, in its sole discretion, may adjust resources to partner
23 with the imposing city as of the date that the new general business
24 licensing requirement takes effect. If the department cannot
25 reallocate resources, the city may issue and renew its general
26 business license until the department is able to partner with the
27 city.

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

31 (a) Insufficient funds are appropriated for this specific
32 purpose;

33 (b) The department cannot ensure the business licensing system is
34 adequately prepared to handle all general business licenses due to
35 unforeseen circumstances;

36 (c) The department determines that a delay is necessary to ensure
37 that the transition to mandatory department issuance and renewal of
38 general business licenses is as seamless as possible; or

39 (d) The department receives a written notice from a city within
40 sixty days of the date that the city appears on the department's

1 biennial partnership plan, which includes an explanation of the
2 fiscal or technical challenges causing the city to delay joining the
3 system. A delay under this subsection (3)(d) may be for no more than
4 three years.

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

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

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

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

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

34 (7) A city may decline to partner with the department for the
35 issuance and renewal of a general business license as provided in
36 subsection (1) of this section if the city participates in the online
37 local business license and tax filing portal known as "FileLocal" as
38 of July 1, 2020. For the purposes of this subsection (7), a city is
39 considered to be a FileLocal participant as of the date that a
40 business may access FileLocal for purposes of applying for or

1 renewing that city's general business license and reporting and
2 paying that city's local business and occupation taxes. A city that
3 ceases participation in FileLocal after July 1, 2020, must partner
4 with the department for the issuance and renewal of its general
5 business license as provided in subsection (1) of this section.

6 (8) By January 1, 2019, and each January 1st thereafter through
7 January 1, 2028, the department must submit a progress report to the
8 legislature. The report required by this subsection must provide
9 information about the progress of the department's efforts to partner
10 with all cities that impose a general business license requirement
11 and include:

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

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

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

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

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

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

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

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

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

33 (b) If the department is unable to administer a city's fee
34 structure, the city must work with the department to adopt a fee
35 structure that is administrable by the department. If a city fails to
36 comply with this subsection (2)(b), it may not enforce its general
37 business licensing requirements on any person until the effective
38 date of a fee structure that is administrable by the department.

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

6 (4) The business licensing system need not accommodate any
7 monetary penalty imposed by a city for failing to obtain or renew a
8 general business license. The penalty imposed in RCW 19.02.085
9 applies to general business licenses that are not renewed by their
10 expiration date.

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

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

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

26 NEW SECTION. **Sec. 6.** Cities may not require a person to obtain
27 or renew a general business license unless the person engages in
28 business within its respective city. For the purposes of this
29 section, a person may not be considered to be engaging in business
30 within a city unless the person is subject to the taxing jurisdiction
31 of a city under the standards established for interstate commerce
32 under the commerce clause of the United States Constitution.

33 NEW SECTION. **Sec. 7.** A general business license change enacted
34 by a city whose general business license is issued through the
35 business licensing system takes effect no sooner than seventy-five
36 days after the department receives notice of the change if the change

1 affects in any way who must obtain a license, who is exempt from
2 obtaining a license, or the amount or method of determining any fee
3 for the issuance or renewal of a license.

4 NEW SECTION. **Sec. 8.** (1)(a) The cities, working through the
5 association of Washington cities, must form a model ordinance
6 development committee made up of a representative sampling of cities
7 that impose a general business license requirement. This committee
8 must work through the association of Washington cities to adopt a
9 model ordinance on general business license requirements by July 1,
10 2018. The model ordinance and subsequent amendments developed by the
11 committee must be adopted using a process that includes opportunity
12 for substantial input from business stakeholders and other members of
13 the public. Input must be solicited from statewide business
14 associations and from local chambers of commerce and downtown
15 business associations in cities that require a person that conducts
16 business in the city to obtain a general business license.

17 (b) The department, association of Washington cities, and
18 municipal research and services center must post copies of, or links
19 to, the model ordinance on their internet web sites. Additionally, a
20 city that imposes a general business license requirement must make
21 copies of its general business license ordinance or ordinances
22 available for inspection and copying as provided in chapter 42.56
23 RCW.

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

30 (2) A city that imposes a general business license requirement
31 must adopt the mandatory provisions of the model ordinance by January
32 1, 2019. The following provisions are mandatory:

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

36 (b) A uniform minimum licensing threshold under which a person
37 would be relieved of the requirement to obtain a city's general
38 business license. A city retains the authority to create a higher
39 threshold for the requirement to obtain a general business license

1 but must not deviate lower than the level required by the model
2 ordinance.

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

6 (b) A city that requires a city registration as provided in (a)
7 of this subsection must partner with the department to have such
8 registration issued through the business licensing service in
9 accordance with chapter 19.02 RCW. This subsection (3)(b) does not
10 apply to a city that is excluded from the requirement to partner with
11 the department for the issuance and renewal of general business
12 licenses as provided in section 2 of this act.

13 NEW SECTION. **Sec. 9.** Cities that impose a general business
14 license must adopt the mandatory provisions of the model ordinance as
15 provided in section 8 of this act by January 1, 2019. A city that has
16 not complied with the requirements of this section by January 1,
17 2019, may not enforce its general business licensing requirements on
18 any person until the date that the mandatory provisions of the model
19 ordinance take effect within the city.

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

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

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

29 (3) Incorporate comments from statewide business organizations
30 concerning the process and substance of the model ordinance.
31 Statewide business organizations must be allowed thirty days to
32 submit comments for inclusion in the report.

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

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

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

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

13 (iii) One nonvoting representative from the department.

14 (b) The task force may seek input or collaborate with other
15 parties, as it deems necessary. The department must serve as the task
16 force chair and must staff the task force.

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

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

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

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

33 Correct the title.

EFFECT: (1) Eliminates the December 31, 2022, deadline for the
department of revenue to phase-in the issuance and renewal of general
business licenses.

(2) Requires the department to partner with at least six cities
between January 1, 2018, and December 31, 2021, and the remaining

cities not already partnered with the department or otherwise exempt from partnering between January 1, 2022, and December 31, 2027.

(3) Replaces the hardship exemption specifications in the underlying bill with a provision permitting the department to delay implementation for up to three years, if the department 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 provided within sixty days of the city appearing in the department's partnership plan and must include an explanation of the fiscal or technical hardship.

(4) Eliminates the provision permitting cities to terminate their partnership with the department if after one year the city determines continuing to partner with the department creates an undue hardship.

(5) Requires the department to submit a progress report to the legislature, replacing the list of report recipients in the underlying bill.

(6) Provides if a city does not work with the department to adopt a fee structure that is administrable by the department, the city may not enforce its general business licensing requirements until the effect date of a fee structure that is administrable by the department.

--- END ---