

HOUSE BILL REPORT

EHB 2005

As Passed Legislature

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:

Committee Activity:

Finance: 2/14/17, 2/23/17 [DP].

Floor Activity:

Passed House: 3/2/17, 96-2.

Senate Amended.

Passed Senate: 4/12/17, 49-0.

House Concurred.

Passed House: 4/17/17, 97-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Requires most cities to partner with the Department of Revenue (Department) to administer general business licenses through the Department's Business Licensing Service.
- Requires the Department to submit a biennial partnering plan and annual progress report.
- Requires cities, through the Association of Washington Cities, to form a committee 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.

HOUSE COMMITTEE ON FINANCE

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. Signed by 11 members: Representatives Lytton, Chair; Frame, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Dolan, Pollet, Springer, Stokesbary, Wilcox and Wylie.

Staff: Richelle Geiger (786-7139).

Background:

City Business and Occupation Taxes.

Local Business and Occupation Taxes (B&O) 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. Effective April 20, 1982, the Legislature set the maximum tax rate that can be imposed by a city's legislative body at 0.2 percent (0.002), but grandfathered in any higher rates that existed on January 1, 1982. All ordinances that impose this tax for the first time, or raise rates, must provide for a referendum procedure. Any city may levy a rate higher than 0.2 percent, if it is approved by a majority of the voters. Forty-three of Washington's 281 cities levy this tax.

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 Legislature was concerned about the lack of uniformity of the local B&O tax ordinances, and about allegations that some business income was subject to multiple taxation. The legislation requires 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.

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 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 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.

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 the Department of Revenue (Department) on July 1, 2011. The Master License Service was renamed to the Business Licensing Service (BLS) to better reflect the program's purpose. The BLS 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.

The cities of Seattle, Tacoma, Bellevue, and Everett have been working together since 2010 to simplify the process of local business licensing and B&O tax filing. In 2014 these cities 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. This joint effort is to create an Internet website application gateway where tax collection and business licensing functions can be collectively administered, and where businesses operating in multiple cities can use a one-stop system for tax payment or local business license application filing. This website began operations in 2016 and is known as FileLocal.

Local Tax and Licensing Simplification Task Force.

The Legislature enacted Engrossed House Bill 2959 in 2015, directing the Department to lead a 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.

The task force consisted of the following nine members: two representatives from the Association of Washington Business (AWB); one representative of the National Federation of Independent Business (NFIB); one representative of the AWC; one representative from the Washington Retail Association (WRA); one representative from a Washington city or town that imposes a local B&O tax and has a population greater than 100,000; one representative from a Washington city or town that imposes a B&O tax and has a population of less than 100,000; one representative from FileLocal; and one representative from the Department who served as chair of the task force.

In 2017 the 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 or alternative options to improve the administration of local business tax and licensing; and provided recommendations for options evaluated by the task force. The task force provided recommendations on four of the five topics and did not provide a recommendation to centralize B&O tax collection.

Summary of Engrossed Bill:

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 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 they need to delay implementation due to fiscal or technical challenges, the Department can 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 can 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 this bill.

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 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 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.

The Legislature directs cities, towns, and identified business organizations to partner and recommend changes to simplify the two-factor municipal B&O tax apportionment formula. The Local Business and Occupation Tax Apportionment Task Force 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 task force chair. The Department will staff the task force. The task force may seek input or collaborate with other parties if necessary. The task force must present its recommendations to the Legislature by October 31, 2018.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill continues several years of work by the committee to help small businesses with regulations and reports. This bill is a proactive and reasonable step towards simplifying business regulation requirements.

Representatives from cities and the business community have spent the last summer working on a task force in order to develop recommendations for improving the business licensing requirements. This bill reflects the cooperation and compromise that took place during the work sessions, as well as represents a huge amount of work and many unanimous decisions. The task force came to multiple tactical and strategic solutions to issues.

Both the cities and business community agree that a "one-stop shop" model for obtaining a license and renewing licenses makes sense. The simplicity will increase compliance, get more businesses registered, and will result in significant time savings for small businesses. The Department's BLS is a logical centralized portal.

The model ordinance will also help businesses comply with city licensing requirements.

Recommendations on how to improve apportionment can be completed sooner than 2018, and presented to the legislature next session. The apportionment system is broken, and no one defended it on the task force. To complete the recommendation, the right people need to be at the table to have the discussion.

The business community supports this bill. Businesses are burdened with the current system, and this helps alleviate the burden. It makes sense to simplify the administration. Multiple city requirements, locations, and differences in renewal dates makes it challenging to comply.

Under this bill, the Department administers the licensing process, but the cities retain significant autonomy over their own rates and enforcement.

This bill provides a number of safety valves with delays, long implementation timelines and exemptions for FileLocal, and findings of hardships in order to make sure the timeline works for participating cities and businesses.

(Opposed) None.

(Other) Cities should have the option to use FileLocal or reject participation.

The hardship thresholds need to be reviewed and determined if they are appropriate. Cities with populations over 500 have serious problems and should be granted flexibility as well. There should be an advisory board to determine the right hardship parameters.

Persons Testifying: (In support) Representative Lytton, prime sponsor; Ron Bueing and Eric Lohnes, Association of Washington Business; Roger Flygare, Flygare and Associates; Mark Johnson, Washington Retail Association; and Patrick Connor, National Federation of Independent Business.

(Opposed) None.

(Other) Peter King and Paul Roberts, Association of Washington Cities; and Glen Lee, City of Seattle.

Persons Signed In To Testify But Not Testifying: None.