

HOUSE BILL REPORT

ESSB 5777

As Reported by House Committee On: Finance

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:

Finance: 3/17/17, 3/30/17 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- 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 to the Legislature and other stakeholders.
- 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

Majority Report: Do pass as amended. 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.

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.

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 a 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 and 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 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, 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 Local Tax and Licensing Simplification Task Force (task force) during the 2016 interim to evaluate and develop options: (a) to improve the local business licensing process; (b) to examine the difference in nexus between the state and cities; (c) to examine allocation and apportionment methods; (d) to centralize B&O collection; and (e) to 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; 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 persons; 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 Amended Bill:

Cities, unless otherwise exempted, are required to partner with the Department to issue and renew general business licenses (licenses) through the BLS by December 31, 2022, if funding is provided in the omnibus appropriation act by June 30, 2017. 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.

Cities are exempt from partnering with the Department to issue and renew licenses through the BLS if the city participates in the FileLocal program or the city legislative authority determines that partnering with the Department would cause an undue hardship. Cities that decline partnership must notify the Department in writing within 60 days of the release of the

annual partnership plan. A city, after partnering with the Department for a minimum of one year, may terminate their partnership with the Department if they determine the partnership is causing undue hardship. The city must provide written notice to the Department of its reasons to terminate the partnership at least 60 days before termination. Hardship may include, but is not limited to, lack of fiscal and technical ability to participate in the partnering process as determined by the city legislative authority, lack of support from the city legislative authority to become a partner, preference for a local system based on local circumstances or conditions, or other hardships identified by the city.

By January 1, 2019, and each January 1 thereafter through January 1, 2028, the Department must submit a progress report to the Governor, the Legislature, and stakeholders 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. Cities may not require businesses to renew a license more than once a 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; refusing to issue a license due to an incomplete application or 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 (B&O 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 B&O Task Force chair. The Department will staff the B&O Task Force. The B&O Task Force may seek input or collaborate with other parties if necessary. The B&O Task Force must present its recommendations to the Legislature by October 31, 2018.

Amended Bill Compared to Engrossed Substitute Bill:

The Department must 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. The Department may 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 60 days of the city appearing in the Department's partnership plan and must include an explanation of the fiscal or technical hardship. Cities may not terminate their partnership with the Department if after one year the city determines continuing to partner with the Department creates an undue hardship. The Department must submit a progress report to the Legislature, instead of the list of report recipients in the engrossed substitute bill. 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 effective date of a fee structure that is administrable by the Department.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: 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 reflects a great amount of work and continues to be a work in progress.

Many businesses require multiple business licenses. It is critically important for the state to have one place for all businesses to obtain licenses.

The model ordinance and apportionment formula taskforce are supported by multiple stakeholders.

All of the types of hardship a city may encounter can't be anticipated, and the "hardship" language in Engrossed Substitute Senate Bill (ESSB) 5777 provides the flexibility to address any possible hardship concern.

Concerns were made by representatives of the business community regarding the "hardship" language in ESSB 5777 being overly broad and needing to be narrowed.

Some stakeholders were of the opinion that the deadline in which a city can adopt FileLocal should be moved out to House Bill 2022, giving cities ample time to get on board with FileLocal.

(Opposed) None.

Persons Testifying: Senator Brown, prime sponsor; Eric Lohnes, Association of Washington Business; Mark Johnson, Washington Retail Association; Peter King, Association of Washington Cities; Mike Folkers, City of Aberdeen; and Robert Hamud, MuniServices.

Persons Signed In To Testify But Not Testifying: None.